

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: Chapter 11
Case No. 23-10763 (DJB)
Stream TV Networks Inc., et al.
Debtors.
Monday, April 14, 2025
10:30 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE DEREK J. BAKER
UNITED STATES BANKRUPTCY JUDGE

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1 (Proceedings commenced at 10:30 a.m.)

2 THE CLERK: Okay. This is the Monday, April 14,
3 2025 calendar for Judge Derek Baker. 10:30 list has a few
4 matters for the Stream TV Network's case, including the
5 adversary, Rembrandt 3D Holding, versus Trustee Homony.

6 THE COURT: All right. Good morning. Let's take
7 appearances. I guess I'll start with -- I'll start on the
8 far -- on my far left, and then we'll go across and get
9 anyone who's on the phone.

10 MR. VAGNONI: Good morning, Your Honor. Michael
11 Vagnoni on behalf of William Homony, Chapter 11 Trustee.

12 THE COURT: Good morning.

13 MR. COREN: Good morning, Your Honor. Steven
14 Coren, special counsel for the trust.

15 THE COURT: Good morning.

16 MR. KURTZMAN: Good morning, Your Honor. Jeffrey
17 Kurtzman, Kurtzman Steady, for SSG Advisors, LLC.

18 THE COURT: Good morning.

19 MR. THOMPSON: Good morning, Your Honor. John
20 Thompson of Akerman, LLP, on behalf of VSI.

21 THE COURT: Good morning.

22 MR. MICHAELS: Good morning. Chris Michaels from
23 Brown and Michaels, P.C., on behalf of Rembrandt 3D Holding,
24 Limited.

25 THE COURT: Good morning.

1 MR. DEMARCO: Good morning, Your Honor, Andrew
2 Demarco, Devlin Law Firm, also here for Rembrandt.

3 THE COURT: Good morning.

4 MR. SWICK: Good morning. Adam Swick with
5 Akerman, on behalf of Visual Semiconductor. Pleasure to be
6 before you, Your Honor.

7 THE COURT: Good morning. All right. Anyone else
8 need to enter an appearance?

9 MR. SWICK: I was just saying we do have our
10 witness, Nicole. She just appeared in remotely, so she --

11 THE COURT: I see that.

12 MR. SWICK: Yep.

13 THE COURT: So before we get started, I'm
14 guessing, right, we probably won't get to your witness
15 probably until sometime at least an hour, right?

16 MR. SWICK: I think that's probably right, Your
17 Honor.

18 THE COURT: All right. So if she wants to do
19 something else and dial back in in an hour, that's totally
20 fine with me.

21 MR. SWICK: Okay. So, Nicole, there are two
22 motions that you're not necessarily here for. So when the
23 motion for administrative expense comes on, I'll let you know
24 when to dial by again, okay?

25 MS. MANEEN: Okay. Thank you.

1 THE COURT: Okay. Is there anyone on the phone who
2 needs to enter an appearance or on the Zoom? Excuse me.

3 MR. WALLACE: Your Honor, this is Neil Wallace.
4 I'm counsel for Rembrandt. I'm just watching.

5 THE COURT: Okay. Great. Good morning.

6 MR. WALLACE: Good morning, sir.

7 THE COURT: All right. I want to, again, thank
8 the parties for the status conference that we had a couple
9 weeks ago, as well as for all of the briefing and the
10 paperwork. I do think it's probably the right approach to
11 take the SSG motion first, sort of address that, because I
12 think based on at least the status conference, that was a
13 somewhat isolated issue.

14 And then we'll talk about the motion to dismiss
15 and then we'll turn to the administrative claim. Does that
16 sound like the right approach by the parties?

17 MULTIPLE VOICES: Yes, Your Honor.

18 THE COURT: Is there anything that the parties
19 need to update me on relative to any of those motions? Okay.
20 All right. So I'll turn the podium over then to Mr.
21 Kurtzman.

22 MR. KURTZMAN: Thank you, Your Honor. Again,
23 Jeffrey Kurtzman on behalf of SSG Advisors, LLC. At the
24 preliminary status conference, I advised Your Honor that I
25 intended to proceed by way of an offer of proof. Mr. Victor

1 is in the Courtroom and available for cross-examination. So
2 with Your Honor's permission, I would simply proceed.

3 THE COURT: That's fine.

4 MR. KURTZMAN: Okay. If called as a witness, Mr.
5 Victor would testify on direct examination as follows: He is
6 a founder and managing director of SSG Advisors, LLC, which
7 I'll refer during the presentation this morning to as SSG.

8 SSG is a preeminent investment banking firm with a
9 national and international reputation for investment banking
10 services, including financings and asset sales for
11 financially challenged companies. SSG has provided advisory
12 services in hundreds of transactions, including with respect
13 to the sale of assets under Section 363 of the Bankruptcy
14 Code.

15 Mr. Victor's experience is extensive, having
16 served as SSG's primary professional in hundreds of
17 transactions, including in this and other courts nationwide.

18 At the request of the Chapter 11 Trustee in these
19 cases, SSG agreed to serve as the Trustee's investment banker
20 to market and sell the Debtor's assets.

21 On September 20, 2024, this Court entered an order
22 approving SSG's retention as the Trustee's banker and that
23 appears at Docket No. 741.

24 Immediately following its retention, SSG commenced
25 the process of preparing a teaser as well as more

1 comprehensive marketing materials and to compile a list of
2 prospective purchasers for the Debtor's assets, including the
3 Debtor's equity interests in various subsidiary entities.

4 In addition, SSG compiled a virtual data room
5 consisting of diligence materials, which would assist
6 potential buyers in evaluating an acquisition of all or some
7 portion of the Debtor's assets.

8 SSG contacted approximately 550 potential buyers,
9 of which two signed non-disclosure agreements and obtained
10 access to the data room. The two interested parties were
11 Visual Semiconductor Inc., one of the objecting parties, and
12 a company known as Continental Advisory Services.

13 Ultimately, only one party submitted a bid for the
14 assets, which was SeeCubic, the stalking horse bidder. In
15 part based on Mr. Victor's testimony at a sale hearing
16 conducted by Judge Chan on December 4, 2024, and Mr. Victor's
17 declaration in support of the proposed sale, which was filed
18 at Docket No. 852, this Court approved the Trustee sale of
19 the Debtor's assets to SeeCubic, finding that the transaction
20 reflected in the asset purchase agreement met all of the
21 standards arising under Section 363.

22 A transcript of the sale hearing appears at Docket
23 No. 878.

24 On December 9, 2024, Judge Chan entered the sale
25 order. That's at Docket No. 876, expressly overruling the

1 respective objections filed by Rembrandt and VSI.

2 On January 8th, 2025, Judge Chan docketed her
3 memorandum opinion with respect to the sale order. That's at
4 Docket No. 916. Judge Chan found, specifically based on Mr.
5 Victor's declaration and his testimony at the sale hearing,
6 that the sale was the product of the Trustee's sound business
7 judgment. And that finding appears at Pages 15 and 16 of the
8 opinion.

9 In carrying out its duties and responsibilities as
10 the Trustee's investment banker, SSG, at all times, acted
11 solely in accordance with the instructions of its client and
12 under the supervision of Judge Chan.

13 Notwithstanding its interest in maximizing the
14 sale proceeds, SSG took into consideration and discussed with
15 the Trustee and his professionals information provided by
16 Rembrandt concerning that entity's alleged proprietary
17 technology.

18 In that regard, one, the Trustee's sale pleadings
19 contained an explicit representation that Rembrandt's
20 intellectual property license would not be assumed and
21 assigned to any buyer. Two, Mr. Victor and SSG incorporated
22 information provided by Rembrandt in its marketing materials,
23 which is reflected in Mr. Victor's declaration in support of
24 the sale.

25 And three, the sale order itself carved out from

1 the injunction provisions Rembrandt's right to pursue
2 infringement claims against the buyer, which were therefore
3 specifically preserved.

4 SSG's activities in these cases were consistent
5 with its activities in other bankruptcy engagements and were
6 at all times subject to oversight, both by the Trustee and
7 this Court.

8 Notwithstanding the objector's argument that SSG
9 acted with gross negligence or recklessness or engaged in
10 willful misconduct, the record of these proceedings
11 demonstrates that time and again VSI and Rembrandt advanced
12 arguments identical to those being used here to frustrate the
13 Trustee's sale efforts.

14 Time and again, including in the sale order and
15 her opinion, those arguments were rejected by Judge Chan, who
16 refused to be misled just as those parties are attempting to
17 mislead the Court today in the context of the indemnification
18 application.

19 The joint objection to the extent that it's even
20 comprehensible, Your Honor, suggests that SSG had a duty to
21 VSI and Rembrandt to abandon the sale efforts based on claims
22 that proprietary technology was embedded in the Debtor's
23 assets.

24 However, SSG didn't take direction from VSI and
25 Rembrandt. It took direction from the Trustee and this

1 Court.

2 In addition, the sale order expressly affords
3 Rembrandt the right to bring an infringement action against
4 the asset purchaser, thereby preserving its rights against
5 the only possible defendant, which is SeeCubic.

6 At no time during this engagement did SSG or its
7 employees act outside the scope of the matter for which they
8 were retained. As noted in SSG's pending application,
9 Rembrandt has sued SSG and five of its employees, including
10 Mr. Victor, for patent infringement. It did so without
11 seeking prior leave of this Court in violation of the Barton
12 Doctrine.

13 The SSG defendants have a right to defend
14 themselves in that action, and that right includes the right
15 of indemnification, as specifically provided in SSG's
16 retention application and order. Mr. Victor utterly rejects,
17 and he believes that the Court can plainly see based on this
18 record that none of the disqualifying conduct is present
19 here.

20 The objectors argue that SSG's conduct was knowing
21 or reckless because Rembrandt sent it threatening emails.
22 But the fact was and remains that SSG was tasked with a job
23 by the Trustee and this Court, and it did that job in the
24 face of unfounded threats and accusations leveled by the
25 objecting party. In short, SSG chose professionalism in the

1 face of intimidation.

2 Based upon all of the foregoing, Your Honor, Mr.
3 Victor submits that SSG is entitled to indemnification under
4 the clear language of the SSG retention application and order
5 frivolous arguments to the contrary notwithstanding.

6 And as I indicated, Mr. Victor is available for
7 cross-examination.

8 THE COURT: Thank you, Mr. Kurtzman.

9 MR. KURTZMAN: Thank you, Your Honor.

10 THE COURT: Anyone wish to cross-examine Mr.
11 Victor?

12 MR. THOMPSON: Yes, Your Honor, we do. But we
13 have some opening statements if Your Honor would accept them.

14 THE COURT: I'll take them more in --

15 MR. THOMPSON: Okay.

16 THE COURT: -- closing arguments, all right?

17 MR. THOMPSON: Yes, Your Honor.

18 THE COURT: Thank you. So I'll ask Mr. Victor to
19 come forward.

20 (Witness sworn)

21 THE CLERK: Please state your name for the record.

22 THE WITNESS: J, the initial, Scott Victor,
23 V-I-C-T-O-R.

24 THE CLERK: Please state your address for me,
25 business address.

1 THE WITNESS: 5 Tower Bridge, West Conshohocken,
2 PA, Suite 420, 19428.

3 THE COURT: You may proceed, counsel.

4 CROSS-EXAMINATION

5 By MR. THOMPSON:

6 Q Good morning, Mr. Victor.

7 A Good morning.

8 Q SSG gets retained in bankruptcy cases to assist debtors
9 in the marketing and sale of the estate assets under 363 of
10 the Bankruptcy Code on a pretty regular basis, right?

11 A Very regular and Trustees, as well.

12 Q Okay. Roughly how many times has SSG been retained
13 back as investment banker to a bankruptcy estate for purposes
14 of doing a 363 sale?

15 A At least 200.

16 Q So it's fair to say that you have a great deal of
17 experience and so does SSG; is that right?

18 A Yes.

19 Q SSG has a process that it employs to engage in the
20 marketing and sale of assets under 363 of the Bankruptcy
21 Code; does it not?

22 A Yes.

23 Q And that process includes a review of the debtor's
24 assets to be sold, correct?

25 A Yes.

1 Q And that process includes the setup of a data room for
2 prospective buyers to engage in due diligence, correct?

3 A Correct.

4 Q That process -- when you have a data room, that process
5 includes the execution of non-disclosure agreements by any
6 prospective bidders that want to see those critically
7 important due diligence documents for the debtors in the
8 sale, correct?

9 A Correct.

10 Q And in this case, you actually had bidders execute
11 NDAs, right?

12 A Yes.

13 Q And you do that because you want to make sure as the
14 investment bankers for a particular case that no essential or
15 confidential information, proprietary information to the
16 Debtors is leaked or otherwise exposed to the marketplace, to
17 other competitors, et cetera?

18 A Sure.

19 Q Do you know whether Rembrandt's technology was
20 contained in the California servers, that is, computer
21 servers of Stream TV?

22 A Have no idea. These are mystery servers that no one
23 seems to have.

24 Q Okay. Do you know whether Rembrandt's technology was
25 contained in the SeeCubic BV servers that were maintained in

1 Netherlands?

2 A We specifically asked. And on a management call with
3 one of the parties that signed an NDA, the SeeCubic BV
4 engineers specifically denied they had any Rembrandt
5 technology on their servers.

6 Q Did you know that the license agreement from Rembrandt
7 to Stream included not only Rembrandt's patents but also its
8 trade secrets?

9 A I had seen that settlement agreement as well as the
10 other one which never went into effect.

11 Q I'm asking a different question. Did you know, as a
12 matter of fact, in the matter of your inquiry that you just
13 testified to about the investigation of assets, whether
14 Rembrandt's technology, specifically its patents and its
15 trade secrets, were incorporated in the license from
16 Rembrandt?

17 A I read the settlement agreement, and I just don't know
18 whether there is any Rembrandt technology.

19 Q You're not aware of Rembrandt technology?

20 A No.

21 Q What did you do to investigate the assets that were
22 being sold by SSG in connection with the Stream TV --

23 A Sure.

24 Q -- 363 sale?

25 A The assets were primarily whatever hard assets exist at

1 the Stream TV level as well as the equity interest that
2 Technoveda had in a series of non-Debtor subsidiaries,
3 including SeeCubic, NV, in The Netherlands.

4 Q As part of the process in any March sale, SSG takes
5 part in the development of an asset purchase agreement; is
6 that correct?

7 A Not often, but sometimes.

8 Q You're aware of what's on the asset purchase agreement?

9 A Yes.

10 Q You are aware of what was on the asset purchase
11 agreement in this sale of Stream TV asset?

12 A Yes, I was.

13 Q Did that include IP assets?

14 A It included IP assets, but it specifically excluded any
15 IP or trade secrets of Rembrandt, specifically.

16 Q How would you know what that means if you didn't know
17 what Rembrandt's IP was?

18 A Well, I'm not sure Rembrandt has any IP that Stream had
19 and certainly, SeeCubic NV, but the asset purchase agreement
20 was quite specific, as it often is. It either assumes
21 intellectual property that the debtor has or it excludes it.
22 In this particular case, it was quite clear that it was
23 excluded from the purchase.

24 Q Well, that's not correct, is it? Because intellectual
25 property was included, expressly included. Stream's

1 intellectual property was expressly included as an asset on
2 the list of assets to be assigned in the asset purchase
3 agreement.

4 A Stream's, but not Rembrandt's.

5 Q Point taken. But how do you know that Stream's
6 intellectual property was transferred in connection with this
7 sale without Rembrandt's property in it?

8 A It's not my job to know. It's counsel's job. My job
9 is to represent the Trustee, follow the Court's directive,
10 report to the Court, if necessary, and our job was to sell
11 assets. It's your job as counsel to either VSI or Rembrandt
12 to determine if improper assets were being sold, and you
13 raised multiple objections over multiple hearings, each of
14 which was denied.

15 Q But you said that's counsel's role. That's not your
16 role.

17 A It's not our role.

18 Q Okay. Is it your role --

19 A Most of our cases involve the sale or transfer of
20 intellectual property or licenses.

21 Q I was going to ask you that question, but I thank you
22 for volunteering it --

23 A Yeah.

24 Q -- Mr. Victor.

25 A Most of them.

1 Q And when you do that, when you actually transfer market
2 and sell intellectual property assets, what process do you
3 undertake, SSG undertake, to do that, I'll say, responsibly?

4 A If it's an asset of the estate that we're selling, we
5 sell it. If it's not an asset for the estate, it can't be
6 sold, and someone, be it IP counsel, Debtor's counsel, and
7 objector's counsel will object to it.

8 Q You spoke about IP counsel. Was there IP counsel in
9 this case?

10 A SSG certainly didn't have one. It wasn't our function.

11 Q Okay. Did you ever speak to SSG counsel, or I'm sorry,
12 did you or SSG ever speak to IP counsel in connection with
13 this case?

14 A Yes. The Trustee did have IP counsel.

15 Q So you did speak to that counsel?

16 A Yes.

17 Q When did you speak to that counsel?

18 A Several times over the course of this sale process.

19 Q When's the first time you spoke to them?

20 A Probably September.

21 Q Okay. When after that?

22 A October, November.

23 Q Okay. So you --

24 A But there were questions --

25 THE COURT: Counsel, we can't have overtalking.

1 So --

2 THE WITNESS: There were questions that came up
3 about IP, and there was IP counsel involved.

4 By MR. THOMPSON:

5 Q Okay. Is it your understanding that IP counsel was of
6 the view and provided an opinion with respect to the assets
7 that were sold?

8 A I don't recall what IP's opinion -- what IP counsel's
9 opinion was.

10 Q Have you ever seen a written opinion by IP counsel?

11 A I have not.

12 Q Have you asked the Trustee whether a written opinion
13 was provided by IP counsel?

14 A I don't remember.

15 Q You don't remember whether you asked?

16 A I don't remember if I even asked. I certainly haven't
17 seen one, but I don't even remember if I asked if there was a
18 written opinion.

19 Q Do you typically request an IP counsel's written
20 opinion or opinion of any sort?

21 A Never.

22 Q You never do?

23 A Not once.

24 Q So have you ever had a challenge as to whether you are
25 selling -- whether SSG is engaged in selling intellectual

1 property assets that may not be assets of the estate?

2 A Certainly not in this context, no. There have been
3 many occasions where there's a licensor or alleged owner of
4 intellectual property that will engage in negotiations with
5 the debtor or the buyer or both about the transfer of the
6 license or the IP. Never involves SSG.

7 Q It never involves SSG?

8 A Ever.

9 Q Does it involve SSG -- strike that. Is that because
10 the involvement with counsel, that is debtor's counsel,
11 happens before the retention of SSG -- for the negotiations
12 that you referred to?

13 A Not at all. Sometimes it happens during the course of
14 the sale process. Most often it does. Certainly not before
15 we get engaged, sometimes it does. But it's very common for
16 counsel for a buyer, counsel for a licensor, counsel for an
17 IP holder, and counsel for the debtor to negotiate what's
18 being transferred. Happens every day.

19 Q Okay. But in that circumstance, you would take the
20 representation from IP counsel as definitive as to what as to
21 the assets that you were selling on behalf of the estate; is
22 that right?

23 A In every case for the past 42, I've never seen anything
24 like this, where we're being sued for selling assets that the
25 Court approved, that we were directed by the Chapter 11

1 Trustee. So this is certainly a first.

2 Q Okay.

3 MR. THOMPSON: Your Honor, I have no further
4 questions, but I believe Mr. Michaels does.

5 THE COURT: Okay. Great.

6 CROSS EXAMINATION

7 BY MR. MICHAELS:

8 Q Good morning.

9 A Good morning.

10 Q I'll try not to go over the same ground you just
11 covered with Mr. Thompson.

12 A That would be good.

13 Q But you mentioned that you participated in, I believe
14 you said, hundreds of sales?

15 A Hundreds, yes.

16 Q What percentage of those sales included intellectual
17 property?

18 A I'd say most of them.

19 Q Most of them. How many times did you conduct a sale
20 where an owner of intellectual property provided you notice
21 that continuing with that offer to sell and sale would be an
22 infringement of their intellectual property?

23 A You are the very first. Congratulations.

24 Q I appreciate it, and this is not a distinction that
25 Rembrandt was looking to have.

1 A Well, it does.

2 Q But in this context, you mentioned -- let me back up a
3 second. In your cross-examination, you mentioned that there
4 was another agreement. You're aware of the -- you said you
5 were aware of the Rembrandt/Stream settlement agreement and
6 then the other agreement.

7 A Yes.

8 Q What was the other agreement you're referring to?

9 A I believe the original settlement agreement that
10 resulted from Rembrandt's litigation against Stream in the
11 District Court of New York was settled in 2021. Of course,
12 Stream never abided by any of it, never paid any of the
13 monies.

14 Rembrandt never declared default, but yet there was
15 another settlement, an amended settlement, I believe, in '23,
16 after Stream's bankruptcy, that was never submitted to the
17 Court, so it was never binding. But there was a second one
18 that I read.

19 Q If it wasn't submitted to the Court, how did you become
20 aware of it?

21 A It was part of the record in multiple litigations that
22 you have instituted.

23 Q Right. So when you say it was part of the record, I
24 think what you're referring to is that VSI included it as
25 part of its disclosure statement in the process of submitting

1 for a reorganization plan, i.e., it submitted it to the
2 Court?

3 A I don't think so. No. I don't think so at all.

4 Q You're saying that as far as you know --

5 A It was somewhere, long before the disclosure statement.
6 I don't know when it was ever filed in this case because
7 there was never funding for the plan. So it was illusory.

8 Q So which are you saying is illusory, the amendment or
9 the original settlement agreement?

10 A Well, I think the original settlement agreement and the
11 amendment were illusory, but Stream's potential for a plan of
12 reorganization was illusory because they had no funds.

13 Q So when you say that the original settlement agreement
14 that you referred to in 2021, are you aware that that was
15 based on a term sheet negotiated before a federal magistrate
16 judge?

17 A Yes, I read that. I read that in your pleadings, yes.

18 Q So are you suggesting that Magistrate Parker
19 participated in some collusive or illusory conduct?

20 A Not at all.

21 Q How about Shadron Stastney, who initialed and executed
22 every page of those terms in 2019, was he participating in
23 collusive conduct?

24 A Not to my knowledge.

25 Q Are you aware of any difference between the terms

1 negotiated before Magistrate Parker with Shadron Stastney and
2 the 2021 settlement agreement that was eventually signed by
3 Mathu Rajan?

4 A I did not study him close enough. And if I did, I
5 certainly don't remember them now, so I don't know how close
6 they were to the actual settlement agreement that was
7 executed in '21.

8 Q Rembrandt has submitted on multiple occasions that they
9 were financially substantially identical and that the
10 agreement negotiated with Shadron Stastney before a federal
11 magistrate judge --

12 A But yet Stream never -- but yet Stream never --

13 THE COURT: Mr. Victor, let Mr. Michael ask his
14 question first, please?

15 THE WITNESS: Yes.

16 By MR. MICHAELS:

17 Q So and what basis are you suggesting that Magistrate
18 Parker, DLA Piper, Rembrandt, Shadron Stastney were illusory,
19 in some collusive illusory negotiation? What is your basis
20 for such a statement?

21 A Well, I never said illusory. I never said it was
22 fraudulent in any way, but there were payments to be made by
23 Stream to Rembrandt under the 2021 settlement agreement that
24 were never made.

25 There were hundreds of TV monitors of different types

1 that were to be manufactured by Stream that were to be given
2 by Rembrandt, which Rembrandt valued at literally hundreds of
3 millions of dollars. That was illusory because Stream had
4 zero possibility of producing those machines. They had no
5 funds.

6 Q Have you ever seen an UltraD TV produced by Stream?

7 A No.

8 Q You've never looked at one of the Streams? Are you
9 aware that they were in the marketplace and for sale to the
10 public?

11 A No. I believe that there were models and tests out
12 there, but I don't believe there was any commercialization at
13 all.

14 Q Are you aware of the evidence that Rembrandt has
15 submitted where it purchased such a TV prior to bringing its
16 2016/2017 Southern District of New York complaint and
17 evaluated in full?

18 A No. I don't recall.

19 Q So to take it you've not read that complaint in the
20 Southern District Of New York as a result of --

21 A Oh, I did. Yes.

22 Q Well, that included a reference to having purchased in
23 the marketplace that TV so that it was on sale. Are you --

24 A Well, I know that Stream currently has a model because
25 when Continental Advisors signed an NDA and got access to the

1 data room, they told me they had seen a demonstration by Mr.
2 Rajan and Stream. So he apparently still has one.

3 Q So as part of that settlement process, Stream provided
4 Rembrandt three display -- in addition to the one that you
5 previously purchased, three displays for evaluation by our
6 technical team. When you say they were capable of producing
7 a TV, where did those TVs come from?

8 A I don't know. I assume they were made by third parties
9 because there's no manufacturing. There were no employees.
10 There was nothing at Stream.

11 Q I have an iPhone. Did Apple build the iPhone?

12 A Someone in Asia built that iPhone for Apple. Yes.

13 Q It's an Apple iPhone.

14 A Correct.

15 Q The Stream --

16 A They have the license.

17 Q In all descriptions of this technology, are you aware
18 that the base LCD TV is built by any of a number of LCD
19 manufacturers? There's a lens package and then a bunch of
20 software and assembled similar to an Apple assembles its
21 iPhone under its design and direction?

22 A If you say so, yes.

23 Q Okay. So it's not that you're denying that there are
24 TVs in the world branded as Stream TV, all UltraD TVs.

25 You're just saying that it wasn't physically built within the

1 corporation here in Pennsylvania. It was built by some Asian
2 manufacturer who assembled it under contract with Stream.

3 A There were test models. Again, never commercialized.

4 Q How does the test model differentiate -- how is that
5 differentiated from a TV for sale in commerce?

6 A Easy. One's a test, one's developing the technology,
7 transferring 2D technology to 3D technology, and one is
8 actually commercializing it with a plant probably in Asia for
9 mass scale production. Completely different things.

10 Q Completely different things. And the end result of
11 this, can you take a TV that is built by what you're saying
12 is a test model and a TV that's built by mass production and
13 tell the difference?

14 A I'm not an engineer, but probably yes.

15 Q How would one go about differentiating a test model
16 from a production model? What would be different?

17 A Well, a test model for anything is a test to see if the
18 technology works, to work out kinks in the technology, be it
19 software, algorithms, the lens, many different things.
20 That's just not commercialization.

21 Q So what size -- what number of TVs would have to be
22 produced where it could be something other than a test model?

23 A Thousands at least.

24 Q You do know that Stream produced upwards of 5,000 TVs.
25 So by your own definition --

1 A Where are they?

2 Q They've been sold into the marketplace.

3 A I mean, we were under contract and we were negotiating
4 with somebody to buy 500 that have been sold to a
5 distributor, right? I mean, these are out there. They were
6 sold to commercial entities who were distributing as of, you
7 know, Best Buy. Now, these are TVs that are sold in the
8 high-end markets. But the --

9 MR. KURTZMAN: Your Honor, is this a question?

10 THE COURT: I'm waiting.

11 By MR. THOMPSON:

12 Q So I'm trying to ascertain that currently Mr. Victor
13 has operated -- you've operated under a belief that Stream
14 did not produce in a commercial way. Yet by your own
15 definition, you would agree that 5,000 -- would you agree
16 that 5,000 TVs plus would be commercial production?

17 A No, that's not why I'm here. Why I'm here is to -- and
18 why I was here -- was to market the assets for sale, which is
19 what we did.

20 Q So you said you were aware of Rembrandt license
21 agreement and that you were aware of the term sheet
22 negotiated before Magistrate Judge Parker?

23 A Yes.

24 Q To your knowledge, did that term sheet, did that
25 license agreement include a license to Rembrandt's trade

1 secrets and Rembrandt's patents?

2 A The patents? Yes. Trade secrets? I just don't
3 remember.

4 Q So you were aware that at the time, the parties
5 negotiated to obtain a license -- for Stream to obtain a
6 license to Rembrandt's patent. Do you remember approximately
7 how much value Stream offered in that negotiation?

8 A In the 2021 settlement agreement, I think Stream was to
9 pay Rembrandt \$2.5 billion dollars, another cash payment
10 sometime later, and to produce literally thousands of -- two
11 different types of screens for Rembrandt.

12 Q You say thousands. If I told you that that amount was
13 3 million, would you consider that to be off?

14 A That's a lot.

15 Q And in those documents, do you recall that Shadron
16 Stastney had represented during those negotiations that the
17 average margin on the at cost TVs was \$400?

18 A I have seen that in pleadings, yes.

19 Q So you sell businesses for a living, \$400 times 3
20 million TVs, is my math correct that it's \$1.2 billion worth
21 of value?

22 MR. KURTZMAN: Judge, we're now substantially
23 beyond the scope of direct, and counsel is arguing with the
24 witness instead of asking him questions?

25 THE COURT: I'll allow the question.

1 THE WITNESS: It's a lot, but I believe it's
2 completely illusory. But sure.

3 By MR. MICHAELS:

4 Q You're suggesting that Shadron Stastney gave an
5 illusory number of \$400 when he tried to encourage --

6 A No. What's illusory was Stream's ability to produce
7 those televisions.

8 Q Are you aware that that settlement agreement gave
9 Rembrandt a license back -- granted Rembrandt a license to be
10 able to manufacture its own TVs so long as it obtained a
11 license from Phillips?

12 A I don't recall.

13 Q Okay. So even if you don't recall, even though we've
14 put you on notice of these things and you say it's the only
15 time you've ever received such a notice, you're saying you
16 don't remember that Rembrandt has stated it has these rights,
17 that it licensed these rights that are not allowed to be
18 transferred. Do you remember that we told you that before
19 you conducted the sale?

20 A Oh, yes. You threatened me several times.

21 Q Did you seek your own counsel from independent patent
22 counsel not representing the Trustee before you proceeded
23 with this offer to sell and sale?

24 A Absolutely not.

25 Q Are you aware of any form of intent requirement with

1 respect to the infringement of a patent?

2 A No. First time I've ever been accused of infringing a
3 patent.

4 Q So if an engineer at Apple invent something on their
5 own and sells it and it turns out Samsung has a patent that
6 covers that, does the fact that they did so innocently have
7 any impact on their patent infringement?

8 MR. KURTZMAN: Objection. Calls for legal
9 conclusion, Your Honor.

10 THE COURT: Sustained.

11 MR. MICHAELS: I'll withdraw.

12 By MR. MICHAELS:

13 Q What steps did you personally take to ensure that the
14 assets that were excluded from the sale by the judge in the
15 order were not included in the sale?

16 A We reviewed carefully the language of the asset
17 purchase agreement and were satisfied, based upon the
18 statements made by the buyer, what was written in the asset
19 purchase agreement, and what was stated in open court at the
20 sale hearing, that the buyer was not acquiring any of
21 Rembrandt's technology, and that technology was specifically
22 excluded from the sale.

23 Q So we all agree that it was excluded from the sale.
24 What I asked you is what step or steps did you take to make
25 sure that the assets that were protected by a restraining

1 order, that were excluded from the sale by Judge Chan were
2 actually not included in the assets that were being
3 transferred to SeeCubic?

4 A Not my job.

5 Q Not your job. So the answer is none.

6 A None.

7 Q Right.

8 A And we made sure the we made sure the asset purchase
9 agreement excluded any asset that contained Rembrandt
10 technology and statements from counsel on the record at the
11 sale hearing on December 4th. That was sufficient. I cannot
12 go into a server which I never saw or even knew existed and
13 determine if there was any source code from anyone other than
14 Stream.

15 Q So you said you were familiar with that list of assets
16 that were sold, right?

17 A Yeah.

18 Q Are you familiar with the fact that it included in the
19 list of assets source code on a server at SeeCubic BV?

20 A Yes. And the SeeCubic BV engineers specifically stated
21 time and time again that there was no Rembrandt technology or
22 source codes in their servers.

23 Q Which engineer was that?

24 A Patrick Toon was the lead engineer, and there were
25 several others I couldn't even pronounce on the phone.

1 Q Is Dr. Barenbrug one of those?

2 A Say again? I

3 Q Is Dr. Barenbrug one of the engineers that represented
4 to you?

5 A I don't recall. I dealt primarily with Patrick Toon.

6 Q In the list of assets that we were asked to mark up, do
7 you recall that Rembrandt specifically pointed to 175 trade
8 secrets that it had documentation for that were disclosed to
9 at least Dr. Barenbrug?

10 A Well, certainly, you had -- based upon Judge Chan's
11 order from the bid procedures hearing, you requested and VSI
12 requested the opportunity to comment on a list of assets that
13 we would post in the data room, and you did, both of you,
14 where you made all sorts of allegations and certainly chilled
15 bidding for anybody who may have been interested.

16 Q That's interesting. So you say a chilled bidding.

17 A Well, you certainly threatened everyone.

18 Q Right. So what you're saying is the companies in the
19 marketplace would not touch this with a ten-foot pole given
20 the allegations of IP infringement that were involved, yet
21 you felt it appropriate for you to go -- and SSG to go
22 forward with the sale despite industry experts and companies
23 saying, I'm not touching this.

24 A Well, actually, I would say something different. I
25 would say that no one was touching this asset because of the

1 years of acrimonious litigation between Rembrandt, Stream and
2 the Hawk parties. That's why no one would touch it.

3 Q At what point did you decide not to take Rembrandt up
4 on its offer to go in and say, look, just take it out, right?
5 We will facilitate the process just like this provided in the
6 Phillips license, that when the license ends, we're going to
7 have a quick audit, engineer-to-engineer audit, process and
8 remove our technology.

9 A Because the Court rejected your request multiple times
10 to do just that.

11 Q The Court demanded that -- you say she rejected it, but
12 you do agree the sell order said it excluded all of
13 Rembrandt's assets.

14 A Yes.

15 Q Okay.

16 A And so is the APA.

17 Q Well, I'm asking you why you did not follow an industry
18 standard practice of going through an end-of-license audit to
19 make sure the technology has been removed, just like it's
20 provided in the Phillips (inaudible).

21 A Really? Is that -- are you stating that that is an
22 investment banking industry standard? And I can tell you
23 it's not.

24 Q We're talking about intellectual property.

25 A No. We're talking about investment banking. We're

1 talking about my role as an investment banker.

2 Q Yes --

3 A My role as an investment banker is not to listen to
4 you. You're not the client. My job as the Trustee's
5 investment banker or the Debtor's investment banker is to go
6 at the direction of my client and the Court, period.

7 Q If there was a bag of money with Bank of America
8 sitting on it and your Trustee said, hey, please go pick up
9 that bag of money and bring it back to me. Or more better
10 yet, deliver it over to SeeCubic. Do you believe that's a
11 reasonable action and the normal action of an investment
12 banker?

13 MR. KURTZMAN: Objection, Your Honor.

14 THE COURT: What's the basis of the objection?

15 MR. KURTZMAN: Hypothetical. It has no relevance
16 to the subject matter or the questioning.

17 THE COURT: Do you have a response?

18 MR. MICHAELS: I think it's highly relevant in
19 that we are -- the simplistic hypothetical that I'm giving is
20 an exact corollary to our situation. We have pointed
21 exactly -- list off a 75 trade secrets, name, rank, and seal.
22 We identified the documents where those trade secrets were
23 included and who they were transferred to and said, we want a
24 process to take it out. And I'm asking the witness, why
25 didn't he take -- why -- what steps did he take to take out

1 those trade secrets listed in that documentation?

2 THE COURT: And I think he testified that that's
3 not within the purview of an investment banker to do it.

4 MR. MICHAELS: Which is what led to the question
5 of would he have the same answer if it was as much more
6 simple example of a bag of money sitting there with Bank of
7 America. In this case, there's -- the bag of money is
8 Rembrandt's trade secrets documented through emails back and
9 forth with the engineer who --

10 THE COURT: Well, I think the question that you
11 asked was, how would he think differently if there was a bag
12 of money that said Bank of America on it and the Trustee told
13 him to go pick it up? If you're trying to sort of liken the
14 question, I think the question would be, what would you do if
15 there was a bag of money that said Bank of America on it and
16 the Trustee said sell that? You can ask them that question,
17 but that's not the same question.

18 By MR. THOMPSON:

19 Q Well, I'll ask you exactly the question. Do I need to
20 restate the question, or can we go with what the judge's
21 exact language?

22 A If the Trustee and the Court determined that that bag
23 of money that said Bank of America on it belonged to the
24 estate, it would be an asset that's for sale that the Court
25 would subsequently approve.

1 Q Did the Court ever make the determination that the
2 trade secrets and patents listed by Rembrandt belong to the
3 estate?

4 A No. No court ever has.

5 Q Okay. So to go back to the question the judge
6 articulated, no judge has said that that bag of money
7 belonged to the estate, but the Trustee is telling you to go
8 sell it.

9 A Actually, quite the contrary. Judge Chan in court on
10 December 4th and in her subsequent written opinion said the
11 assets being sold are the assets, and Rembrandt has the right
12 to pursue the buyer. Have at it.

13 Q Well, I agree that we have the right to pursue those
14 claims, and, hence, we have told in no uncertain terms, we
15 all agree the assets were excluded. We put SSG on notice,
16 and yet you can --

17 A You say the assets were excluded. Judge Chan didn't
18 rule the assets were excluded. Whatever assets there were,
19 they were sold. To the extent you have trade secrets or
20 hidden source codes or whatever, you have the right to pursue
21 the buyer, just like in any other case involving licenses and
22 patents and intellectual property.

23 Q So, Mr. Victor, you said they aren't excluded. Are you
24 suggesting --

25 A The Rembrandt intellectual property was specifically

1 excluded in the APA and the order.

2 Q Yes. Absolutely. And we are alleging that the assets
3 sold included that anyway.

4 A That's why you have litigation.

5 Q Okay. Exactly. And so moving on, is your motion for
6 SSG, if you're seeking indemnification for SSG, does that
7 include the cost of defense for the five individuals
8 involved?

9 A Absolutely, yes.

10 Q Are those individuals independently represented from
11 SSG?

12 A They are not.

13 Q Are you aware, as speaking as SSG, that the individual
14 employees and SSG, but let's talk about the -- referencing
15 the five individuals, that they stand accused of assisting in
16 the transfer of trade secrets over Rembrandt's objection, and
17 that is a ten year felony under 18 USC 1832?

18 A Is there a question in there?

19 Q Are you aware that that potentially has criminal
20 liability for all --

21 A So you've threatened me.

22 Q So what I'm asking is, if any of those individuals --
23 do you understand that if any of those individuals take the
24 fifth, that in a civil context, it could have potential
25 liability for SSG?

1 MR. KURTZMAN: Objection. Calls for a legal
2 conclusion, Your Honor.

3 THE COURT: Sustained.

4 By MR. THOMPSON:

5 Q If any of those individuals provide a testimony that
6 would be adversary to SSG, would SSG cease covering their
7 legal expenses?

8 A No.

9 Q Have you received any budget with respect to the cost
10 of providing a defense to the allegations of Rembrandt?

11 A No.

12 Q The scope of the indemnification you're seeking, do you
13 expect it to be \$10,000, \$10 million, where are we in what
14 you expect this to cost?

15 A I really have no idea.

16 Q Do you believe that SeeCubic, Inc. owes an
17 indemnification for these causes of action?

18 A Under the terms of the asset purchase agreement and
19 order, they do. They owe it to the Trustee and the estate,
20 yes.

21 Q And so have you sought reimbursement from SeeCubic?

22 A The Trustee has written an indemnification demand
23 letter to SeeCubic, yes.

24 Q To your knowledge, has that been paid?

25 A I don't think anything's been presented to SeeCubic

1 yet.

2 Q All right. How do you reconcile that with your answer
3 to the previous question?

4 A Oh, easy. The Chapter 11 Trustee, Mr. Homony, wrote a
5 letter to SeeCubic, saying that we've been sued, and he is
6 therefore requesting indemnification pursuant to the terms of
7 the asset purchase agreement in the order.

8 Q And you're saying that is it your understanding they
9 have not responded? Is that what you -- is that how you
10 answered the second --

11 A No. I don't think any bill has been sent to them.

12 Q Oh, you're saying the demand for indemnification was
13 provided, but it did not include a specific request for
14 payment.

15 A Correct.

16 Q I apologize for misunderstanding. So if this
17 indemnification request is met, you're expecting that the
18 legal cost of the five individuals that are employed by SSG
19 and SSG will be covered by the estate?

20 A Yes. That's what our engagement agreement provides,
21 the retention application and the retention order.

22 Q Do you understand that that indemnification would
23 include coverage for criminal acts?

24 A I haven't gotten a knock on the door from the
25 District -- the Department of Justice yet, so I'm not worried

1 about it.

2 Q Would it include coverage for willful and grossly
3 negligent acts?

4 A It would depend. If there was a final decree by a
5 court of competent jurisdiction, not subject to further
6 appeal, that would be an exemption from the indemnification.

7 Q So if Rembrandt prevailed to -- the Court's final
8 jurisdiction -- in a willful infringement claim, a claim of
9 misappropriation of trade secrets and was successful, you're
10 saying that that conduct would not be covered by a claim
11 of -- your indemnification provision?

12 A Again, legal conclusion, which I can't speak about, but
13 the indemnification provision in the order provides that
14 absent a final decree, not subject to further appeal by a
15 court of competent jurisdiction, that SSG was engaged in
16 gross negligence, willful misconduct, fraud, whatever, that
17 would be a prohibition to indemnification after the fact.
18 But in the meantime, defense costs are paid.

19 Q So you agree that under some circumstance, it could
20 be -- you might be have to pay all that money back.

21 A Yes, sir. We'll see.

22 Q Do you have the financial wherewithal within SSG to
23 cover 10, \$15 million with the legal expenses and pay it
24 back?

25 A I believe we do.

1 Q Okay. Let me just check my notes. Looking good.

2 Thank you very much.

3 THE COURT: Mr. Kurtzman, before you ask
4 questions, Mr. Victor, I have two lines of questioning. The
5 first is, has the Trustee submitted any opposition to SSG's
6 request for indemnification?

7 THE WITNESS: No. The Trustee supports it, Your
8 Honor.

9 THE COURT: And has SSG submitted their final fee
10 application?

11 THE WITNESS: Not yet. Pending this.

12 THE COURT: Thank you. That's all I had.

13 MR. KURTZMAN: Very briefly, Your Honor.

14 REDIRECT EXAMINATION

15 By MR. KURTZMAN:

16 Q Mr. Victor, counsel asked you whether SSG analyzed the
17 Rembrandt intellectual property interest in connection with
18 its engagement as the Trustee's investment banker, correct?

19 A Yes.

20 Q Did SSG enter into an engagement agreement with the
21 Trustee with respect to the investment banking engagement?

22 A Yes.

23 Q Did the engagement agreement set forth any affirmative
24 duties by which SSG is required to analyze specific
25 intellectual property rights as they related to either

1 Rembrandt, VSI, or any other part?

2 A Of course not. It never would.

3 Q Were counsel's arguments regarding Rembrandt's
4 intellectual property rights raised before Judge Chan at any
5 prior proceedings?

6 A Multiple proceedings.

7 Q What happened?

8 A Always rejected by Judge Chan.

9 Q Thank you.

10 MR. KURTZMAN: Thank you. Nothing further, Your
11 Honor.

12 THE COURT: Recross?

13 MR. THOMPSON: Yes.

14 RECROSS EXAMINATION

15 By MR. THOMPSON:

16 Q Mr. Victor, you just responded to questions from your
17 counsel with respect, or I'm sorry, from the Court with
18 respect to the Trustee's, Chapter 11 Trustee's, objections,
19 if any, and you said there were none.

20 A Um-hum.

21 Q Was there an objection by the U.S. Trustee to this
22 request for indemnification?

23 A I haven't seen one.

24 Q Okay. Was there any informal objection?

25 A Not to my knowledge.

1 Q Any inquiry from the U.S. Trustee's Office?

2 A Nothing to my knowledge.

3 Q Are you aware of Capstone's original retention or
4 attempted retention in this case?

5 A I am.

6 Q Have you reviewed the documents associated with that?

7 A I have not.

8 Q What's your understanding of why Capstone was not
9 retained?

10 A My understanding is that Capstone would not -- would
11 only take on the assignment for the Trustee if there was a
12 limitation of liability, and our engagements do not have a
13 limitation of liability in chapter proceedings.

14 Q Okay. Was there a question about specifically, gross
15 negligence and willful misconduct in connection with their
16 retention?

17 A With respect to whose, Capstone's?

18 Q With Capstone's knowledge.

19 A No, I think it was just a general limitation of
20 liability, which is common language in an investment banking
21 engagement agreement that have a limitation of liability.
22 Our non-bankruptcy cases always have one. But many, many,
23 many, many years ago, the U.S. Trustee objected to limitation
24 of liability, and we never submit limitations of liability in
25 chapter proceedings.

1 Q Are you aware that the U.S. Trustee at that time
2 expressed a concern specifically about gross negligence and
3 willful misconduct with respect to the limitation of
4 liability in that engagement agreement?

5 A Not at all, no.

6 Q You're not aware?

7 A No.

8 MR. THOMPSON: Thank you, Your Honor.

9 THE COURT: Anything further, Mr. Michaels?

10 MR. MICHAELS: No. Thank you. I'm good.

11 THE COURT: Okay. Thank you very much, Mr.
12 Victor.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: Mr. Kurtzman, do you have further
15 witnesses?

16 MR. KURTZMAN: No further witnesses, Your Honor.
17 I don't know if this is the appropriate time to offer a brief
18 argument, but I'm prepared to do so if the Court would
19 permit.

20 THE COURT: Well, before I take argument, do you
21 have -- you want to move your exhibits in?

22 MR. KURTZMAN: I do, Your Honor. I would move the
23 admission of all of the exhibits in the binder, which
24 consists of Exhibits S-1 through S-10.

25 THE COURT: And those are the exhibits that were

1 identified on your exhibit list at Docket No. 994?

2 MR. SWICK: That is correct, Your Honor.

3 THE COURT: Okay. Is there any objection to the
4 Court receiving the exhibits that were identified on the
5 Exhibit list, 994?

6 MR. THOMPSON: No objection, Your Honor.

7 MR. MICHAELS: On behalf of Rembrandt, we move
8 similarly for our exhibits to be entered.

9 THE COURT: I'm going to get to you in a minute.

10 MR. MICHAELS: Okay.

11 THE COURT: Do you have any objection to the SSG
12 exhibits?

13 MR. MICHAELS: I'm sorry, Your Honor. I answered
14 no. I do not.

15 THE COURT: Okay. All right. Thank you, Mr.
16 Kurtzman.

17 (Exhibits S1-S10 entered into evidence.)

18 THE COURT: I'll hear if they have witnesses.

19 MR. MICHAELS: Rembrandt does not have any
20 witnesses.

21 THE COURT: Okay.

22 MR. THOMPSON: VSI has no witnesses, Your Honor.

23 THE COURT: Okay. At that point, would you like
24 to move in your exhibits?

25 MR. THOMPSON: Yes, please.

1 THE COURT: And those are the exhibits that were
2 on your docket or your exhibit list, 999; is that correct?

3 MR. THOMPSON: Yes, Your Honor.

4 THE COURT: Okay. Do you have any objection to
5 the Court receiving the exhibits that were identified on
6 exhibit list, 999.

7 MR. KURTZMAN: No.

8 THE COURT: All right. The Court will receive all
9 of the exhibits that were on the two exhibit lists. And at
10 this point, I'll turn it over to Mr. Kurtzman for closing
11 arguments.

12 MR. KURTZMAN: Thank you again, Your Honor. I'd
13 like to start by congratulating you on taking the bench and
14 by offering my condolences on having inherited this case.

15 In connection with the Trustee's retention of SSG
16 as its investment banker, SSG bargained for and received the
17 right to seek indemnification from the Debtor's estates if it
18 was sued for matters within the scope of its engagement.

19 SSG along with five of its employees has, in fact,
20 been sued in a patent infringement case pending in the
21 district court. Consistent with the U.S. Trustee guidelines,
22 SSG has a right to indemnification except in a very limited
23 circumstances in which it acted recklessly with gross
24 negligence or engaged in willful misconduct. None of those
25 limiting factors is present here.

1 These cases present a record which is difficult to
2 fully absorb, but we're confident that Your Honor has
3 familiarized himself with the relevant history. The Trustee
4 was appointed by Judge Coleman based on a variety of bad
5 acts, including self-dealing by the Debtor's prior
6 management.

7 Under the Trustee stewardship, the cases moved
8 forward for the first time toward a process by which the
9 Debtor's assets could be monetized for the benefit of
10 creditors. The Trustee reached out to SSG to assist in that
11 process, understanding that SSG had substantial experience in
12 the marketing and sale of assets under Section 363. This was
13 not SSG's first rodeo.

14 It did hear what it's done in hundreds of other
15 bankruptcy engagements, which was to confer with its client,
16 evaluate the assets to be sold, prepare a teaser and
17 marketing materials, identify prospective buyers, and engage
18 in outreach to buyer prospects. It acted on the specific
19 instructions of its client and under the direct supervision
20 of this Court.

21 It was not a rogue actor making and executing
22 decisions in a vacuum. SSG's activities in these cases and
23 those of the five employees who have been sued personally
24 were capable and effective as evidenced by the fact that the
25 sale process has resulted in substantial cash proceeds for

1 the estate.

2 By any objective measure and certainly in
3 comparison to the trajectory of the cases under the Debtor's
4 prior management, the sale process was a success. Judge Chan
5 recognized that fact in approving the sale and in her
6 detailed memorandum opinion and we suspect that having
7 reviewed the record, you recognize it, as well.

8 The basis of the objection, as I understand it, is
9 that SSG and its employees were warned by VSI and/or
10 Rembrandt that assets could not be sold to a third-party
11 buyer because doing so would violate certain proprietary
12 rights or interests held by those parties.

13 They claim that in not acquiescing to threats, SSG
14 was grossly negligent. But that's not how this process
15 works, Judge. We operate in an adversary system in which
16 movants and respondents seek specific relief, are afforded
17 the opportunity to lodge objections, hearings are conducted,
18 and judges decide. And that's precisely what happened here.

19 The arguments against SSG's indemnification
20 rights, they are the same reheated, recycled arguments that
21 have been raised and rejected so many times now that they've
22 become rote.

23 It was not SSG's role, as Mr. Victor testified,
24 nor the role of its employees to adjudicate VSI and
25 Rembrandt's intellectual property rights. That role fell to

1 Chief Judge Chan who understood the issues raised and made
2 decisions accordingly, including that the successful bidder
3 would not be insulated from infringement claims,
4 notwithstanding the applicability of Section 363(f) and (m).

5 And all of that said, I want to make the record
6 clear that the Trustee and SSG heard the concerns of
7 Rembrandt very clearly and took appropriate steps to address
8 those concerns in all of the materials relating to the sale.

9 First, I would point the Court to Paragraphs 26
10 and 27 of the Trustee sale motion, which is Exhibit S-3 in
11 the binder. Those paragraphs describe the Rembrandt
12 technology license and state explicitly that the Trustee does
13 not intend to sell or assign it.

14 Referring to the sale order, which is Exhibit S-5,
15 Paragraph 12 recites and I'll quote, "For the avoidance of
16 doubt, Rembrandt is not an enjoined party with respect to
17 claims it purports to have against the buyer related to
18 Rembrandt intellectual property alleged to be part of the
19 transferred assets." That appears on Page 20 of the sale
20 order.

21 In the stalking horse APA, which is attached to
22 the sale order, the parties explicitly excluded, as Mr.
23 Victor testified, Rembrandt intellectual property in Sections
24 2.3(j) and (k) from assets being conveyed to the buyer.

25 On December 3rd, 2024, Mr. Victor filed a

1 declaration in support of the proposed sale in which he
2 confirmed that Rembrandt had, in fact, been afforded the
3 opportunity to provide information regarding the list of
4 assets being offered for sale and such information was
5 included, in fact, in the asset list filed with the Court.
6 That's in Paragraph 26 of Mr. Victor's declaration, which is
7 Exhibit S-8 in the binder.

8 So with all of that as background, I won't stand
9 here and argue that the positions adopted by VSI and
10 Rembrandt in opposition to the indemnification application
11 are mean-spirited and petty, although they are.

12 I'll note instead that they misperceive how the
13 bankruptcy process is supposed to work, which is that
14 professionals are expected to perform the services for which
15 they're engaged, notwithstanding threats, notwithstanding
16 intimidation, notwithstanding the institution of frivolous
17 litigation.

18 And those arguments, the objecting parties'
19 arguments, simply ignore everything in the record reflecting
20 that the positions being advanced today are stale, having
21 been addressed in pleadings in the APA and in hearings
22 conducted by Judge Chan.

23 So if we want the bankruptcy process to continue
24 to function, Your Honor, we should not reward the threateners
25 and punish the threatened.

1 Finally, we note that the objecting parties have
2 the burden to demonstrate that SSG acted in a way that was
3 mostly negligent or reckless, not our burden to disprove
4 them. The definition of gross negligence is an extreme
5 departure from a standard of reasonable care.

6 The definition of willful misconduct is an act in
7 wanton disregard of one's duties. There is not a shred of
8 evidence in the record as a whole or in today's proceedings
9 which even suggests that SSG acted improperly unless those
10 standards are somehow reformulated to provide that an estate
11 professional owes a duty to a disgruntled creditor whose
12 primary purpose is to chill a sale.

13 We respectfully submit that this Court should
14 overrule the joint objection and enter an order granting the
15 application.

16 THE COURT: Thank you, Mr. Kurtzman.

17 MR. KURTZMAN: Thank you, Your Honor.

18 MR. THOMPSON: Your Honor, again, John Thompson of
19 Akerman, on behalf of VSI. Your Honor, Let me open by saying
20 what this contested matter is expressly not about. This is
21 not about whether SSG is entitled to indemnification under
22 the terms of the retention order and its retention agreement,
23 the order as issued by this Court. That's not what this is
24 about.

25 We're perfectly fine to acknowledge that SSG, if

1 it falls within the ambit of the words in that
2 indemnification and the order, that they're entitled to
3 indemnification.

4 What we're talking about here is whether the
5 indemnification they seek is really an expansion of the scope
6 of that indemnification agreement and hence, an expansion of
7 the scope of the order issued by this Court, specifically
8 with regard to whether SSG's conduct constituted reckless,
9 misconduct, willful misconduct or gross negligence.

10 By its motion, SSG seeks to expand that scope, and
11 it shouldn't -- the Court should not permit it. It shouldn't
12 permit it for at least three reasons.

13 The first is SSG went into this with eyes wide
14 open, knowingly. I think it's been established on a cross-
15 examination, SSG was fully aware of the risks incumbent in
16 its conduct of the marketing and sale of these assets with
17 specificity. And I'll let Mr. Michaels address that
18 specificity.

19 Second, it ends up having a material impact on all
20 creditors, including both unsecured creditors and
21 administrative expense creditors in this case, of which
22 there's a meaningful number and amount.

23 And finally, I want to refer the Court to my last
24 set of questions to Mr. Victor with respect to the U.S.
25 Trustee's objections to the previous investment banker that

1 was employed in this case or attempted to be employed by the
2 Trustee.

3 The U.S. Trustee was significantly concerned about
4 the limitation of liability that Mr. Victor testified to. He
5 had, albeit, not a full understanding of it, but a limited
6 understanding. I would say that it is indeed correct that
7 that limitation of liability was both not standard, non-
8 standard, right, and unacceptable both to the US Trustees
9 office and ultimately to the Court.

10 The time between the engagement or attempted
11 engagement of Capstone and the ultimate engagement of SSG was
12 at least eight weeks, and I think it may have been more than
13 that, Your Honor. There was obviously a considerable amount
14 of frustration by those professionals who were looking at
15 this case and worried about the potential.

16 The litigious nature, perhaps, some of the things
17 that Mr. Victor was testifying to. I would say also there
18 was a real concern, at least as far as an observer could have
19 of what the U.S. Trustee did, that the U.S. Trustee's office
20 had a considerable concern about the potential liabilities
21 associated with an investment banker's engagement and
22 especially the limitation of liability with respect to that
23 investment banker.

24 I would say here, Your Honor, especially given the
25 knowledge that was possessed by SSG in connection with sale

1 of these assets, it was irresponsible, at best, reckless and
2 indeed, perhaps, even willful misconduct to engage in the
3 sale of assets that, at least it was on active notice,
4 contained the intellectual property of a third party that was
5 not part of the property of the estate.

6 THE COURT: So, Mr. Thompson, can I ask couple
7 questions on that?

8 MR. THOMPSON: Sure, Your Honor.

9 THE COURT: I want to start with the question
10 about -- let's, I guess, start at the end. If the investment
11 banker is tasked with selling the debtor's assets and the
12 Court identifies in a sale order that says we're selling the
13 debtor's assets and only the debtor's assets, why should the
14 investment banker have to engage in any further analysis of
15 what's being sold?

16 MR. THOMPSON: Your Honor, I would ordinarily take
17 the premise of your question, of course, but I think the
18 problem is in the premise.

19 THE COURT: Okay.

20 MR. THOMPSON: This case, if it suffered from
21 nothing else, it suffered greatly from a dearth of evidence.
22 I happened to participate, and I know this is a long answer,
23 Your Honor, but I hope it's helpful for you.

24 I happened to participate in the AVI's views from
25 the bench. I went to -- I was there as an advisory board

1 member of the most recent one.

2 There was a -- I won't attribute any particular
3 comment to any particular judge, but there was a resounding
4 call for one thing and one thing only among every single
5 panel, every single bankruptcy judge there. Please give us
6 evidence. We know that you're all terrific advocates, and
7 you make great arguments on, you know, on closing. But what
8 we really need to make these determinations are evidence.

9 There was a scrupulous effort on the part of the
10 Trustee and his advisers in this case to diminish the factual
11 evidentiary record in this case to its irreducible minimum.
12 We've got other pleadings on file. We've said it a number of
13 times.

14 I won't bemoan it to a greater extent except to
15 say that this Trustee did not know, did not understand the
16 assets that he was selling. We made that point, and we were
17 refused discovery. We were refused -- we were truncated in
18 our cross-examination and we were unable to put on evidence
19 in our case-in-chief during the sale hearing. There wasn't
20 even an evidentiary hearing with respect to the bid
21 procedures.

22 So to say -- so to get to your question, Your
23 Honor, with respect to SSG's requested indemnification here
24 for its duties, somebody had to understand what assets were
25 being sold so that it wasn't out there doing damage to third

1 parties.

2 THE COURT: But why? That's my question, right?
3 So here's -- let's take this sort of right -- there's that
4 statue right there, right? I think that's mine. You think
5 it's yourself. The Trustee says -- I say, I'm going to sell
6 it. And you say, but that's mine. And I say, okay. But I'm
7 selling, right? I think it's mine. I'm going to sell it.

8 MR. THOMPSON: Yeah.

9 THE COURT: But by the way, there's a court order
10 that says, just because Baker sells the statute doesn't mean
11 that, you know, your argument about who owns it goes away.
12 And I think that's what I understand the sale order, right?
13 And I'm reading just cold pieces of paper, right?

14 That's what I think the sale order says. The sale
15 order says, we're not selling any Rembrandt assets. And, oh,
16 by the way, if Rembrandt wants to sue the person who's
17 getting these assets, who thinks that now they're, you know,
18 infringing on Rembrandt's assets, I don't understand why
19 that's an SSG problem.

20 MR. THOMPSON: Your Honor, except for the fact
21 that the Third Circuit thinks differently. In the SLC
22 Capital case, which was cited in the -- I'm sorry. No,
23 Whitehall Jewelers case, which goes specifically to this
24 issue as to what is necessary for the sale of assets in a 363
25 sale where a consign -- where there was an effort to sell

1 consigned goods.

2 And the Court in Whitehall Jewelers said, you've
3 got somebody else's goods. You know you've got it. And they
4 said, well, we couldn't figure out which were which, and
5 therefore, we just sold them. They said, you got to figure
6 that out before you do the sale.

7 THE COURT: Consignments are different, though,
8 right? Because consign -- in consignments, right, there is a
9 principle under the Uniform Commercial Code that says that
10 the asset can actually become titled in the consignee's
11 rights, right? So in that instance, it's different, right?

12 This is very simple, right? They either have
13 title or they don't.

14 MR. THOMPSON: Well, that needs to be figured out
15 beforehand, Your Honor. SLC Capital, which is the Third
16 Circuit opinion, didn't do that with respect to consigned
17 goods. The reason Whitehall Jewelers were citing it, they
18 were citing whether the lienholder's rights were being
19 infringed without due process.

20 THE COURT: But that's a 363(f) problem, which you
21 got protection for in the Court order.

22 MR. THOMPSON: Your Honor, we didn't, right?
23 Indeed, this was engineered in a manner where we couldn't --
24 where if permitted to do what the Trustee really wanted to
25 do, we would have had no time and no ability to even appeal

1 it.

2 That was the -- I mean, that's the -- I would
3 describe it in vernacular, it wouldn't be appropriate for
4 court, but that's the tricking (phonetic), right, of process,
5 of the 363 process, right? Jam you. Jam you on the process
6 and say, it's already all done.

7 THE COURT: Look, I've been on the receiving end
8 of getting the 363 processes before.

9 MR. THOMPSON: I know you have, Your Honor. I
10 know you have, Your Honor. But there were things that they
11 needed to do to afford the third party that was most injured
12 here, and there were other third parties, frankly, with Leah
13 and Phillips. It was more than just Rembrandt. They needed
14 to afford them due process through a full adversary
15 proceeding.

16 You're going to hear argument on it today. That's
17 what they needed to do. The Trustee didn't want to do it,
18 and this record is far, far too insufficient by design. I
19 mean, that was orchestrated, to paraphrase the New York --
20 the North Carolina Supreme Court in a recent decision or
21 relatively recent decision, with, you know, surgical
22 precision.

23 THE COURT: So okay. So let me -- let's assume
24 that I agree with you, right? Let's assume that I agree that
25 the Trustee manipulated a 363 process in a way that was going

1 to limit the ability of the Court to fully understand the
2 scope of the assets that were being sold. I'll -- for
3 purposes of this argument, let's assume I agree with that.
4 Why is that SSG's fault?

5 MR. THOMPSON: All Your Honor -- all the point
6 that we're making is to the extent that SSG will, you know,
7 to use the analogy that Mr. Michaels used and that Your Honor
8 so aptly put in, you know, in stark relief, it is as if it
9 says, here's the Bank of America, the Bank of America labeled
10 bag. The Trustee gives you an order to sell it, and you and
11 SSG looks the other way.

12 THE COURT: That's not what they did, though. SSG
13 held up the bag and said, I'm selling the Trustee's interest
14 in the bag. I don't know if it's somebody else's interest,
15 right? That's not -- and that's why I'm struggling with why
16 that's an SSG difficulty. I understand you might --

17 MR. THOMPSON: Because you can't -- because, Your
18 Honor, you can't be willfully ignorant of the thing that's in
19 the box. You can't pretend that the diamond in the box,
20 right, is being sold for the value of the blue box that says
21 Tiffany's on it. It's got to be sold for the value of the
22 diamond in it. That's a duty that all fiduciaries have,
23 including those that retain -- those agents of the fiduciary
24 that are retained for purposes of selling.

25 THE COURT: Well, I think the -- they're tasked

1 with creating a process and maximizing the value that comes
2 from that process, okay? But they're not tasked with
3 figuring out what the asset is. And at the end of the day,
4 the value of the asset is what a willing buyer is willing to
5 pay for it.

6 MR. THOMPSON: Your Honor, let me say it this way.
7 We talked with Mr. Victor about his normal processes and the
8 execution of NDAs in connection with providing proprietary
9 and confidential information, some of it incredibly secure,
10 important, right?

11 Would there be any question that if SSG had not
12 engaged in the typical NDA process and allowed a prospective
13 bidder to get information that was ultimately trade secret
14 protected and that it leaked, they wouldn't have a liability
15 for that? That's against their ordinary process. I don't
16 think there's any question that would be true.

17 Let's put it -- make it even more aggravated.
18 Let's say that that trade secret had -- because it was a
19 national security related supplier of data, information,
20 code, literally U.S. secrets. If that happened, could SSG
21 walk away and say that that -- what anybody would define as
22 reckless conduct not to have an NDA signed? If it
23 constitutes -- that would not constitute reckless conduct?

24 All we're saying is they can't expand the scope
25 for purposes of reckless conduct, willful misconduct, you

1 know, and gross negligence. That's all.

2 THE COURT: So, okay. So let's sort of end on
3 that point. Or at least let me end my questioning on that
4 point because I've been interrupting you and I apologize.

5 The proposed form of order provides that the Court
6 is going to have -- is going to retain jurisdiction on any
7 matters that arise out of the implementation of the order
8 authorizing the indemnification or the fronting of defense
9 costs by the estate.

10 And SSG hasn't filed a final fee yet. Don't I
11 have the ability to police that after the fact? In other
12 words, if you're -- what you're worried about is, is what I
13 heard you start off by saying, this isn't about whether SSG
14 is entitled to the indemnification provided in their
15 retention order. Okay.

16 That says you're entitled to indemnification
17 unless there's a final determination that you have engaged in
18 willful misconduct or gross negligence or fraud or criminal
19 activity, right? None of those things have happened yet,
20 right? But don't I have the ability to implement that after
21 the fact by protecting?

22 And I think Mr. Michaels actually asked this
23 question directly of -- if they get money that they have to
24 ultimately give back, is SSG good for it?

25 MR. THOMPSON: Your Honor, I would agree with you.

1 But for the experience in this case and counsel for SSG,
2 after much maligning our efforts and motivations in the case,
3 I think maybe I can paraphrase him, We are concerned about
4 things that -- the way things had happened in this case being
5 a closure on issues, right? Representations that things have
6 all been decided.

7 I talked to you about the dearth of an evidentiary
8 record here, right? The scrupulous efforts to eliminate any
9 discovery in the case, right? I just don't want that to be
10 the law of the case, so to speak, Your Honor. But I take
11 your point. I believe that you will be open to, you know, to
12 those arguments, when and if they're made. But I do --

13 THE COURT: Yeah. I don't know how that could be
14 law of the case, especially if the Court order says you're
15 not entitled to indemnification if there's been a final
16 finding on all these things and the Court has retains
17 jurisdiction to implement this order and the final fee up.
18 I'm just not sure how that could be law of the case that
19 prevents the Court from reanalyzing that issue.

20 MR. THOMPSON: Thank you, Your Honor. I will
21 leave it with your -- with your phrase of reanalyzing it.

22 THE COURT: Okay.

23 MR. THOMPSON: That is expressly what this side of
24 the Courtroom doesn't want to be maintained, is a reanalysis
25 of that.

1 THE COURT: Well, it's their form of order that
2 says you retained jurisdiction. So I think it's -- I think
3 it does allow them to do that, but I understand.

4 MR. THOMPSON: I've heard the retention of -- but
5 it's been, you know, it's been illusory, let me say it that
6 way. Thank you.

7 THE COURT: Thank you. Thank you, Mr. Thompson.
8 I think your colleague -- I don't know if he was going to --
9 okay.

10 MR. SWICK: Adam Swick, Akerman, on behalf of VSI.
11 To be very brief, what spurred the objection is that in the
12 motion for indemnification, it says gross negligence, willful
13 misconduct, this is not an issue here. Our adversary and our
14 complaint, that's really all that's at issue here, all right?

15 Then at the end of the motion, it says we need
16 indemnification in all respects. And so that's what prompted
17 the objection.

18 THE COURT: Right. Mr. Swick, let me ask you that
19 question because I did I did go through this. So your action
20 has five counts as I read it.

21 MR. SWICK: Rembrandt's action.

22 THE COURT: Rembrandt's action. I'm sorry.
23 Excuse me. Rembrandt's action. Maybe I should direct this
24 to you.

25 MR. SWICK: Mr. Michaels should because I'm not

1 the expert on that.

2 THE COURT: Okay. Mr. Michaels, then I'll direct
3 it to you.

4 MR. SWICK: Yeah. Well, I just wanted it to do
5 that. And, also, too, I just want -- there's a
6 representation that VSI somehow chilled bidding on this
7 process because in the data room, there was an asset list
8 that was marked up. The only people that ever signed an NDA
9 to get access to the data room was VSI and its related party.
10 So there was no chill bidding as a result of anything in the
11 data room on behalf of VSI. Just wanted to correct that.

12 THE COURT: Understood. Thank you. I will say
13 you all made liars out of me because I thought this was going
14 to be a fifteen minute, right, sort of initial presentation,
15 and we're already at an hour ago.

16 MR. MICHAELS: We've never met attorneys. Your
17 Honor, Chris Michaels for Rembrandt 3D Holding, Limited.
18 Rembrandt is in the business of intellectual property related
19 to no glasses 3D, right? We are not in the business of
20 litigation. We have pursued settlement and mediation at
21 every opportunity.

22 This is not to harangue or any of these
23 allegations of misuse of the judicial process. We have at
24 all times offered this audit procedure where take it out.
25 Either pay for a license or take it out. This idea that you

1 get to transfer our intellectual property without
2 compensation is what we have objected to.

3 The Trustee has rejected numerous efforts, and we
4 put in our disclosures, our letter to Judge Chan, all of the
5 communication referenced to each time we said, hey, this is a
6 simple process. These guys showed up in 2010, 2011, there
7 should have been zero lines of code in your version control
8 system.

9 Let's compare it to Rembrandt's code that existed
10 at that time, and we'll do a compare and a contrast. It's
11 like versions of a contract, right? You can -- these are
12 professional version control systems. Let's look at your
13 development over time and how it differed from Rembrandt's
14 technology. Let's just go search your code for Rembrandt's
15 use of liveliness or --

16 THE COURT: Okay. So this is what I understand
17 from the APA, okay? I understand the APA -- and the sale
18 order. Sale order says we're not selling any Rembrandt
19 assets, right? Rembrandt had the opportunity and did do a
20 very detailed, right, disclosure prior to the sale, right, as
21 part of the bid procedures that said these are all the assets
22 that Rembrandt thinks that they have an interest in, right?

23 The APA says, by the way, right, there are
24 transferred assets. Transferred assets do not include
25 excluded assets. Excluded assets are, right, Rembrandt,

1 right, related IP, right? I mean, I did actually read it,
2 you know, before today, right?

3 So that's what it says. Okay. Now the sale order
4 says, I'm approving the sale of the Debtor's assets. I'm
5 approving the transfer of the assets by the Trustee of the
6 buyer. The only assets that are transferred are transferred
7 assets. It doesn't include your assets.

8 I understand that if those assets moved -- okay --
9 if they did, and there's no -- I mean, you know, to Mr.
10 Thompson's point about evidence, I don't have any evidence
11 that it's moving, right? But if it did, why is that the
12 Trustee's problem?

13 You have your rights to go sue whoever you want --

14 MR. MICHAELS: Including the Trustee, and if --

15 THE COURT: Including the Trustee. If they
16 were -- if the Trustee engaged in a sale of the assets of
17 Rembrandt, but I don't know how you're going to establish
18 that considering every document says it doesn't include that.

19 MR. MICHAELS: So the list of assets included
20 source code on a server, right? It included the TVs that
21 Rembrandt showed in pages comparing the patent claims to
22 those TVs, comparing the relatively short general description
23 of the types of trade secrets that were being licensed in the
24 settlement agreement.

25 One of those descriptions was liveliness and

1 borders. You can go to the TV, turn it on. This is the
2 level of sophistication that was needed to determine whether
3 or not this asset was included in the sale, right? Turn the
4 TV on. Push the menu button. Is liveliness one of the menu
5 items on the TV? It is. We have pictures. It's provided in
6 our papers, right? That's it.

7 Like, this is not, hey, go become an expert in 3D
8 and computer science and visualizations. Does the TV include
9 liveliness? We provided copies of the email back and forth
10 between Dr. Barenbrug and Steve Blumenthal, our founder,
11 where that was developed as part of our assets, right? No
12 evidence to the contrary that's been submitted, that it's
13 absolutely correct that we've been blocked on all discovery,
14 yet we've had this discovery.

15 Literally, 100 percent of the evidence in this
16 case is that the source code on a secure server, the TVs
17 themselves, the firmware that runs those TVs, all include
18 Rembrandt technology. 100 percent, okay? Not a --

19 THE COURT: Let me assume I agree with you.

20 MR. MICHAELS: Yes.

21 THE COURT: Let's assume I agree with you. Why is
22 that a SSG's problem?

23 MR. MICHAELS: Well, that is because -- and you --
24 you're asking the question that the Amazons, the Best Buys,
25 the Walmarts of the world have asked since the incorporation

1 of 35 USC 271. I didn't know. I didn't make the TV. I'm
2 just selling it. Yet the Court --

3 THE COURT: No, no, no, no. He's not selling it,
4 though. SSG is not selling it. The Trustee is selling it.
5 SSG is just creating a process.

6 MR. MICHAELS: Well, with respect, Your Honor, he
7 constantly referred to SSG as selling. His testimony is
8 different from what you're just characterizing his testimony.
9 He included as an offer for sale, a sale teaser, and that's
10 why there is an offer for sale, right?

11 He offered it for sale. He participated in the
12 sale process. These individuals are listed as contact us to
13 conduct this sale. And Congress has determined that with no
14 intent requirement whatsoever, that the Best Buys, the SSDs
15 of the world who are offering this for sale, a ton of
16 Amazon's fulfillment is they put it up on their website, you
17 place an order, and it's shipped from some place in China to
18 your doorstep.

19 THE COURT: Okay. But fine.

20 MR. MICHAELS: And they are liable.

21 THE COURT: Fine. Best Buy gets sued for that
22 because they sell it. They sell it. SSG is not selling
23 anything. They're nothing more than a broker. All they're
24 doing, right? It's look. I'm going to sell my -- I'm going
25 to sell you my house. I have a broker who's going to enter

1 into the contract with you to sell the house. The broker's
2 not selling the house. I'm selling the house, right?

3 MR. MICHAELS: And if you look up -- if you type
4 in broker -- you said 35 USC 271, handling of fringe
5 liability, you'll find the brokers are liable.

6 Both Wilson and -- what I should point out is that
7 Judge Moore, Chief Judge Moore, of the federal circuit, when
8 she was a law professor, wrote an article evaluating every,
9 you know, case of finding of patent infringement in The U.S.
10 court systems for 20-plus years.

11 I found that over half of them, when there was a
12 finding of infringement, was found to be willful, i.e.,
13 exceptional, i.e., treble damages, disgorgement of profits,
14 attorney fees, right? We're looking at, statistically
15 speaking, over a 50 percent chance.

16 And with respect, we've been at this with this --
17 with Stream and we convinced DLA Piper, Armstrong Teasdale,
18 Louis Brisbois, VSI that we should be included in their
19 disclosure statement leading to a reorganization plan. It's
20 not because they said, hey, what we really want to do is pay
21 Rembrandt \$6 million because they're really nice guys.

22 They looked at it and said, we've got to include
23 them or we're screwed, right? We have DLA Piper, Armstrong
24 Teasdale, Louis Brisbois all making actual determinations as
25 to whether or not Rembrandt should be paid and came to the

1 conclusion they should.

2 Judge Coleman was -- we did put on -- the most
3 evidence that was put on in this case was leading to the TRO.
4 She decided Rembrandt's rights needed to be protected and
5 issued a temporary restraining order. When they transferred
6 the source code on a secure server from control of Stream,
7 who had a license, right? At all times, remember I'd said
8 that license is valid. We can't sue currently for patent
9 infringement.

10 Only until we sued or immediately after control of
11 that server went over to SeeCubic, that's what caused the
12 problem. The judge said -- and we all agree with the judge
13 excluded Rembrandt's IP. The issue was when they transferred
14 Rembrandt's IP, the appropriate action after the sale order
15 would have been to write a letter to SeeCubic BV and say,
16 take out all of Rembrandt's technology.

17 And I'm -- with respect to the investigation that
18 was done to call up the -- and by the way, SeeCubic BV at the
19 time was under control of Shadron Stastney, the CEO of
20 SeeCubic. So to call up the future buyer and say, hey, do
21 you have any of this IP that I'm not allowed to sell you?
22 Nope. That was the investigation. That's not reasonable.
23 That is grossly negligent.

24 By his own testimony, this is a unique situation
25 after hundreds of sale processes, right? Never before has he

1 been accused by a patent infringement or trade secret
2 misappropriation, but his response to it was to proceed as
3 normal.

4 THE COURT: Okay. So --

5 MR. MICHAELS: That's gross negligence.

6 THE COURT: And you may be right. Okay. So let's
7 go through the five counts, right? Because I read the
8 complaint, you have three counts for patent infringement on
9 three separate patents. You have a count for
10 misappropriation of defense trade secrets under 18 USC 1836
11 add sec, and you have a breach of contract claim. Those are
12 the five counts against SSG.

13 MR. MICHAELS: Yes.

14 THE COURT: Okay. And the way I read your prayer
15 for relief, you want a determination of infringement, a
16 determination of misappropriation, an injunction against
17 future acts, which is probably moot because I'm guessing he's
18 not transferring anything from now on, and then actual
19 damages, treble damages, and attorney's fee. Okay.

20 If and when you win, if there is a determination
21 that there has been gross negligence or willful misconduct in
22 the acts of SSG in that underlying litigation, why don't I
23 have the ability to address that after the fact by requiring
24 on the final fee application return of any advanced
25 indemnification costs?

1 MR. MICHAELS: I'm trying to answer your question
2 as you've asked it. You may have that power. The question
3 is whether or not their fee application today or
4 indemnification for what is alleged is gross misconduct,
5 right? It isn't that, hey, they had access to something,
6 touched it, and we're upset. Our objection is that they
7 offered to sell it when they were told not to.

8 THE COURT: But they're entitled to
9 indemnification, right? Unless it is judicially determined,
10 the determination having become final, to have arisen from
11 SSG's bad faith, gross negligence, willful misconduct, or
12 fraud.

13 So just because you alleged it doesn't mean
14 they're not entitled to indemnification. It just means that
15 they have to repay it if it's ultimately determined that
16 that's the case.

17 And I think I have the ability to do that not only
18 based on my inherent authority under 328 of the Code or 330
19 of the Code when they seek a final fee out. I also have it
20 under this order.

21 MR. MICHAELS: So I'm not necessarily -- I think
22 you're asking, do I disagree with that, and I don't disagree
23 that you have the power to do that.

24 THE COURT: Okay.

25 MR. MICHAELS: Where we depart is whether or not

1 they should be granted indemnification for what is going to
2 be potentially legal fees beyond the cost -- the value put
3 into this estate. The average cost of defense of a patent
4 infringement case, not including trade secrets, is 5 to \$7
5 million, the average.

6 And each of these individual defendants, with
7 respect, it is not appropriate for the corporate attorney to
8 be representing the individuals who can suffer criminal and
9 massive financial liability if they tow the party line and
10 say we didn't have to investigate this. Because with
11 respect, that is not how any of the patent infringement cases
12 and trade secret cases come down, right?

13 They are going to find in running into a brick
14 wall, they did have a duty to investigate, and they
15 participated over. They're going to admit they had knowledge
16 of Rembrandt's objections. They're going to admit they did
17 nothing to try to take it off these servers, and they're
18 going to be sitting with somebody who finally has some
19 understanding of these IP issues to say, you're in a hurt,
20 you know, a world of hurt.

21 If I write Amazon a letter saying, I understand
22 that you've paid \$1,000 to, you know, Samsung for this TV
23 that was shipped from Korea, and now, it's here in The United
24 States in one of your warehouses. But Rembrandt has come at
25 you with an infringement case. They have to eat that cost.

1 I mean, yes, they can go after Samsung, but they cannot sell
2 it.

3 We can bar them. We can stop it at the border.
4 The IP rates here are incredible, and they won't. Amazon has
5 a part of their website for takedown notices. If you have a
6 trademark, copyright, patent issue, you write them a letter,
7 boom, it comes down. That's the way the commercial world
8 behaves in a situation like this, right?

9 SSG did not do that, right, by their own
10 statement. I just proceeded as if it was not a problem, as
11 if I didn't get a takedown notice. That is not how Best Buy,
12 Amazon, all of the commercial world who are faced with this
13 problem day in and day out, they absolutely positively do not
14 sell.

15 Now, they will do evaluation. They'll ask the
16 vendor to say, you need to indemnify us. You need to explain
17 why you're not infringing, right? And there's a whole
18 process that I've participated in hundreds of times just like
19 Mr. Victor has.

20 They are not behaving the norm. They have gone
21 grossly -- from the get-go, this is grossly negligent. It's
22 willful misconduct. It is -- when it gets compared to the
23 other types of willfulness conduct cases that have gone
24 against defendants, it will be clearly that you were put on
25 notice, you proceeded anyway, the only people you ask are the

1 people that would benefit from the sale, right? That's not
2 an appropriate way to respond to this.

3 THE COURT: Mr. Michaels, can I just interrupt you
4 for a minute? I apologize. Who is it Al who just joined on
5 the Zoom? Oh, okay. All right.

6 MR. MICHAELS: And yeah, I'm finishing up Your
7 Honor. I mean, my closing argument on this is, yes, if we
8 think SSG, and I understand the Court's position, as well, I
9 can get it back from them later. I think the real question
10 is, is it appropriate to grant a defendant in this kind of
11 situation where they were put on notice and then participated
12 in a way that deviates substantially from the people who sell
13 products and sell offers to sell.

14 And Amazon would make the very same argument you
15 just made on their behalf. I'm not selling it. It's this
16 group in China. Well, the whole point of the sale process is
17 that SSG is interacting with the planet and offered 500
18 companies the opportunity to come and buy. And it is telling
19 none of them wanted a piece of it because it's public record
20 that Rembrandt is making these IP claims, and they won't
21 touch it.

22 And I've been telling them that in my letters to
23 them, which are also part of the record, that there's no way
24 anybody's going to buy these because no one buys intellectual
25 property, I mean, companies that are suffering this kind of

1 grossly obvious trade secret and patent misappropriation.

2 So we knew it going in. It all turned out exactly
3 as I was predicting my letter years ago. Wrote Hawk Party,
4 SeeCubic back in 2021. I wrote everybody basically the same
5 letter in April. We included those -- copies in our
6 complaint. Said, this is how this is going to turn out. We
7 are saying this is -- you sat in a room with us and agreed
8 this was intellectual property.

9 I mean, they're saying it's an illusory agreement.
10 Really? Magistrate Judge Parker entered an illusory term
11 sheet, and then Judge Abrams approved the settlement and
12 dismissal of that case, right? I mean, I've never been at a
13 case where a judge was accused of participating in some
14 collusion, you know, to create an inappropriate term sheet in
15 settlement of a litigation, under court ordered mediation to
16 boot, right?

17 We have a valid settlement agreement based on
18 terms negotiated with the buyer in this case. These are not
19 normal circumstances. I've never seen a case as clear of IP
20 and IP infringement as this case, and yet they proceed and
21 say, oh, oh, shucks. I was just the getaway driver. I
22 didn't know -- I didn't look in the bags of the Bank of
23 America, right?

24 THE COURT: So is there -- admittedly, I am not an
25 IP or patent lawyer. No offense, Mr. Michaels, but thank

1 God.

2 MR. MICHAELS: My first time ever --

3 MR. THOMPSON: Your Honor, he may say the same
4 thing about the rest of us, right?

5 THE COURT: But is there just -- just for my own
6 understanding, is there a scenario under which you proceed --
7 you pursue your litigation --

8 MR. MICHAELS: Um-hum.

9 THE COURT: -- and you win on all five counts, for
10 all of the relief that you have requested except for treble
11 damages, and the reason I'm going to say except for treble
12 damages is this, that the Court says, yes, they violated, you
13 know, they acted in a manner inconsistent with the patent.
14 They violated the Trade Secret Act. They breached the
15 contract, right?

16 But it wasn't grossly negligent, and it wasn't
17 willfully misconduct, and there was no fraud. It's just a
18 strict -- essentially, what you were saying earlier, which is
19 essentially, it's a strict liability tort, right? They
20 didn't do anything knowingly, that there was that sort of
21 going to follow from their actions. Is there a scenario
22 under which that could happen?

23 MR. MICHAELS: In the same way that the sun may
24 not rise tomorrow, kind of, of course, yes. But in reality,
25 in the way this is fleshed out, when my client is accused of

1 patent infringement, roughly 15 minutes later, I'm working
2 with the client to figure out what elements of the patent
3 claims are not infringed that I can argue back to the other
4 side and say, hey, I get your argument, but we're not using
5 XYZ element of your independent claims, and therefore, we
6 don't -- we're not liable for patent infringement.

7 Every -- I mean, thousands of times, I have
8 written that kind of email, you know, opinion, and I raise
9 this in every session, mediation, court hearing. They have
10 not once given us a single element of a single claim that
11 they are not using of the Rembrandt patent.

12 THE COURT: Right. But you're saying you're going
13 to win, right? I get it.

14 MR. MICHAELS: Well, that --

15 THE COURT: But my point is, is there a scenario
16 under which you may win, but you just might not going to
17 finding of --

18 MR. MICHAELS: I'm actually answering that
19 question. And so if they win, if they come up with some
20 great argument three minutes before the last day of trial and
21 it prevails, they win, right? What I'm saying is if they
22 lose, the fact that it is now -- we first brought our claims
23 in 2016 that got removed to federal court in 2017. It's
24 2025.

25 It's eight years of me saying in front of judges,

1 magistrates, whoever was settling on the other side, you
2 haven't done this. This is normal behavior. If you don't
3 actually think you infringe, this is what you send me. I'm
4 not using XYZ element of this claim. Therefore, I'm not
5 liable for patent infringement.

6 That is a virtual lock on willful infringement.
7 There is almost no chance. They haven't done that now. At
8 quizzed him, what have you done? Have you talked to a patent
9 attorney, the patent attorney the only way to evaluate a
10 patent infringement claim is to sit down and say, here are
11 the elements of Rembrandt's patent claims, and we are not --
12 we are using -- oh, are we using this one? Yes. We're using
13 this one? Yes. We're using this one? Yes.

14 The very fact that they haven't put this in this
15 court record, that they're not using some element of claim,
16 pretty much tells you everything you need to know. They
17 talked to the patent attorney, pretty much said you got a big
18 problem here or did not make an official opinion.

19 We asked, are you working on an opinion of counsel
20 defense? Right? That's a very common thing to ask for in
21 all sorts of financial transactions, mergers, acquisitions,
22 very frequently asked for an infringement, a non-infringement
23 opinion. They don't have one. They've talked to a patent
24 attorney who didn't provide one, right?

25 So do I think there's a likelihood that they will

1 prevail on a non-willfulness but still lose on the patent
2 infringement? Absolutely not. They've deviated from normal
3 practice and how to respond to these things. They've talked
4 to a patent attorney but provided no patent non-infringement
5 opinion. They proceeded despite being put on notice and told
6 by the Court, these are excluded assets, don't sell them.

7 Being told by a court, there is a restraining
8 order on SCBV interfering with the Rembrandt license, and
9 I -- and that was in place after the sale order for months
10 after the sale order.

11 So as SCBV was transferred to SeeCubic, SCBV was
12 subject to a restraining order and that they proceeded in
13 delivering that asset to Stream, even though there was a
14 restraining order in place. That's also part of our
15 admission in the record, acknowledging -- and Rembrandt's
16 called out in our license agreement and our IP rights are
17 called out directly in that order.

18 So what they're really saying, Your Honor, is even
19 though the judges issued orders excluding Rembrandt's IP
20 rights, issued orders saying you may not interfere with
21 Rembrandt's license. Oh, shucks. What did I know? I asked
22 the people who were buying the asset. They told me,
23 Rembrandt's IP is not here. Even though Rembrandt has
24 provided a list of 175 trade secrets listing the actual
25 documents that prove that case, identifying the individual,

1 the date that information was provided, and three issued
2 valid U.S. patents, right?

3 I mean, I just don't -- how much more evidence is
4 there absent, being barred from all discovery? Let's put
5 these guys on a witness stand, you know? I mean, you know,
6 we would have been happy to do that. We asked for that. And
7 they freaked out. Absolutely not. We don't -- that's
8 inappropriate. We don't want to have these people witness.

9 Think you saw a little bit about how that would
10 have gone. And as you say, of all the people that are liable
11 here, I don't disagree that Scott Victor and his coworkers
12 and SSG are way down the line of culpability, yet they are
13 still culpable, not say Chris Michaels, not say Rembrandt,
14 but so say Congress.

15 You know, it's 35 USD, 271, it's short, read it,
16 offer for sale. Doesn't matter if you knew it was patented
17 or not. It's just did you offer to sell a patented
18 invention? And they did. And they did it knowingly. Thank
19 you, Your Honor.

20 THE COURT: Okay. Thank you, Mr. Michaels. All
21 right. This matter comes before the Court pursuant to the
22 application of SSG Advisors, LLC for an order pursuant to 11
23 USC Sections 327, 328, and 105(a), determining
24 indemnification rights and authorizing and directing William
25 Homony as Chapter 11 Trustee to indemnify and reimburse the

1 applicant. That's at Docket No. 964.

2 In addition to the motion, the Court has received
3 and reviewed the following pleadings and responses: the joint
4 objection to the application of SSG Advisors, LLC for an
5 order pursuant to 11 USC Section 327 and 328, and 105(a),
6 determining indemnification rights and authorizing and
7 directing William A. Homony as Chapter 11 Trustee to
8 indemnify and reimburse applicant at Docket No. 986.

9 The Court held a hearing on the motion at which
10 time the Movant and the Respondents presented evidence and
11 made argument. The evidence consisted of the witness
12 declaration and testimony, including cross-examination of J.
13 Scott Victor as well as the exhibits that were identified,
14 offered, and admitted at the hearing included on the exhibit
15 list at Docket No. 994 and Docket No. 999.

16 Court thanks the parties for their very strong
17 advocacy as well as their well-prepared materials and well-
18 presented oral argument. The matter is now ripe for
19 disposition.

20 The following constitutes the Court's findings of
21 fact and conclusions of law pursuant to Federal Rule of
22 Bankruptcy Procedure 7052 as incorporated by Federal Rule of
23 Bankruptcy Procedure 9014. Court has jurisdiction pursuant
24 to 28 USC Section 1334 and the standing order of reference of
25 the Eastern District Of Pennsylvania, as well, because the

1 matter arises in and is related to a case under the
2 Bankruptcy Code.

3 Venue is proper in this district pursuant to 28
4 USC 1408 and 1409. The matter presented by the motion is a
5 core matter pursuant to 28 USC Section 157(b). To the extent
6 that the matter is deemed non-core and or the Court is
7 without constitutional authority to render a final decision
8 on the motion, the following constitutes the Court's report
9 and recommendation in accordance with 28 USC Section 157.

10 Based on the record before the Court, proper
11 service of the motion was accomplished and evidenced by the
12 certificate of service at Docket No. 964-5. Such service is
13 appropriate under the circumstances and complies with federal
14 bankruptcy procedure 2002, 9013, and all local rules.

15 Pursuant to the motion, the Movant seeks an
16 application seeking a determination of entitlement of
17 indemnification pursuant to the amended retention order. The
18 motion the Movant further asserts that SSG has been sued and
19 intends to seek indemnification. That's outlined in
20 Paragraph 10 and 11 of the application.

21 In response, the Respondent argues that SSG's
22 assertions that its actions are not exempted under Paragraph
23 2 of the approval order is not correct because the action
24 asserts that SSG's actions pled in the complaint were for
25 willful patent infringement and misappropriation of trade

1 secrets. They further allege that the actions complained are
2 "felonies" under trade secret law.

3 The Court has reviewed the action at issue
4 including the five counts that are asserted. Infringement of
5 patent number 8558830, infringement of patent 9521390,
6 infringement of patent 9681114, misappropriation of defense
7 trade secrets at 18 USC Section 1836, et cetera, and breach
8 of contract.

9 Respondent is seeking a determination of
10 infringement, misappropriation, seeking an injunction, actual
11 damages, treble damages, attorney's fees.

12 SSG finally argues that its indemnification is
13 part of its bargain for compensation as part of its
14 engagement. During oral argument, the Respondent made clear
15 that this was not about whether SSG is entitled to
16 indemnification pursuant to the retention order, rather it is
17 about whether SSG's acts are expanding what SSG is otherwise
18 entitled to under the retention order.

19 On the motion, the Movant bears the burden of
20 proof for the relief requested by a preponderance of the
21 evidence and based on the record before the Court, the Court
22 finds as follows.

23 Indemnification is part of the routine and general
24 engagement of investment bankers pursuant to Paragraph 2 of
25 the retention order at Docket No. 741. The only time

1 indemnification is not applicable is if there is a breach of
2 contract asserted by the Trustee, if there is bad faith
3 asserted, if there is fraud asserted, if there is willfulness
4 conduct asserted, and if there is gross negligence asserted.

5 With respect to the last four, there must be a
6 determination that a judicial determination has first
7 occurred and that it be a final determination.

8 The objectors here have not shown that any of the
9 exceptions are triggered. First, the Trustee is not opposing
10 the requested indemnification.

11 Second, none of the prior acts for which there is
12 an assertion have had a prior determination by a court that
13 that they have engaged in bad faith, fraud, willful
14 misconduct, or gross negligence. And it is unclear to the
15 Court whether these causes of action rise to the level needed
16 for that exception.

17 While the Court is cognizant that there can be an
18 award of damages upon the finding of willful patent
19 infringement, that prior determination based on the totality
20 of the circumstances that the actor acted with full knowledge
21 of the patent and disregard for the patent's protection.

22 Further, the causes of action need to be taken
23 into account. SSG is an investment banker, merely a broker
24 selling the assets. SSG is not taking the steps or actions
25 to benefit from exploiting any of the technology that is

1 subject to the patent.

2 The Court can and will retain jurisdiction on
3 ultimate allowance of compensation to SSG, including
4 indemnification, if a later determination is made that
5 addresses any of these former orders or any of these former
6 issues and that can be addressed through disgorgement.

7 In fact, the final decretal paragraph of the
8 proposed order makes that clear.

9 Finally, the Court notes that in the normal
10 course, a request for a determination would ordinarily be an
11 issue presented by Part 7. However, 1001(a) of the Federal
12 Rules of Bankruptcy procedure provide that the rule should be
13 construed and administered to secure "just, speedy, and
14 inexpensive determinations".

15 Here proceeding by motion under rule 9013 rather
16 than via Part 7 had actually broader service that allowed for
17 more parties to have standing to be heard. And for those
18 reasons, the Court does not view the procedural necessities
19 of Part 7 to be applicable.

20 So the Court will enter the proposed form of order
21 as submitted with the retention of jurisdiction. Court
22 otherwise reserves the right to amend or supplement this
23 opinion as permitted by local rule 8003-1, and an appropriate
24 order will issue. Thank you, parties.

25 MR. KURTZMAN: Your Honor, may I be excused?

1 THE COURT: You may.

2 MR. KURTZMAN: Thank you, sir.

3 THE COURT: Thank you for your time today.

4 MR. KURTZMAN: Thank you.

5 THE COURT: It is 12:30. I would intend to
6 proceed with respect to the argument on the motion to dismiss
7 on the terms that we had discussed at the pretrial or the
8 status conference. 15 minutes each of argument, after I give
9 you my initial thoughts, if that's what the parties intend,
10 or we can take a break now and resume after the break. Which
11 would the parties like?

12 MR. MICHAELS: I would prefer to go now, Your
13 Honor. I've traveled from Florida, and I want to make sure I
14 make my flight back.

15 THE COURT: Understood. What time is your flight?

16 MR. MICHAELS: My flight is this evening.

17 THE COURT: Okay.

18 MR. MICHAELS: But given the last one went beyond,
19 I don't want to push it.

20 THE COURT: Okay. All right. So we'll take up
21 the motion to dismiss. So this is the motion to dismiss in
22 the adversary, Rembrandt 3D Holdings, Limited versus Homony,
23 et al, 24-142.

24 I'll give you my initial preliminary thoughts and
25 comments based on what I had the opportunity to read.

1 While I understand that there was an adversary
2 complaint that was filed December 20th, 2024, there are a
3 number of defendants, including the Trustee, the Debtor, Mr.
4 Stastney, who is the alleged CEO of SCI and SCBV, Hawk
5 Investments Limited, SeeCubic, Inc., and SCBV, SeeCubic BV.

6 There are five counts alleged. First count seeks
7 an injunction and order versus the Trustee. Second count
8 seeks an injunction and an order against SCBV. The third
9 count seeks recovery for theft of trade secrets and
10 injunction and order versus Hawk.

11 The fourth count seeks recovery for theft of trade
12 secrets injunction and order against SVI, And count five
13 seeks recovery for theft of trade secrets and injunction and
14 an order regarding Mr. Stastney.

15 The Court notes that the relief sought, which is
16 not separated by account or defendant, first, a finding of
17 misappropriation of trade secrets, a finding that Rembrandt's
18 property is embedded in the Debtor's assets, an award of
19 damages for misappropriation of trade secrets, an award of
20 fees because the case is exceptional, an injunction
21 preventing the sale of the Debtor's assets until the Trustee
22 has determined what assets are Rembrandt and removed, an
23 order requiring the Trustee to remove Rembrandt from the
24 Debtor's assets, and an order requiring the Trustee to
25 transfer source codes to Rembrandt pursuant to section 365(n)

1 of the Bankruptcy Code.

2 Based on the information that the Court was able
3 to glean, the only issues that relate to the Trustee are a
4 finding that Rembrandt's property is embedded in the Debtor's
5 assets, an injunction preventing the sale of the Debtor's
6 assets until the Trustee has determined what assets are
7 Rembrandt and removed, an order requiring the Trustee to
8 remove the Rembrandt assets from the Debtor's assets, and an
9 order requiring the Trustee to transfer source codes to
10 Rembrandt pursuant to 365(n).

11 On the motion to dismiss, the Trustee argues that
12 the claims are barred by the sale order and was mooted by the
13 sale closing. In the opposition, Rembrandt argues that the
14 motion to dismiss is an improper vehicle to assert res
15 judicata, that it does not address the Trustee's duty to
16 account to Rembrandt, and that the motion seeks to insulate
17 the Trustee from an obligation to separate and marshal non-
18 estate assets.

19 The Court can take judicial notice of the events
20 in the Docket 23-57 and in the main bankruptcy case. And
21 with that, I'm happy to take argument.

22 MR. COREN: Thank you, Your Honor. Steve Coren,
23 Special Counsel for the Trustee. As I interpret the
24 complaint, and Your Honor is correct, there's a lot of things
25 thrown in which don't really isolate who the claims are

1 against or what the relief is that's requested.

2 The way we interpret the complaint is that it's
3 essentially seeking an injunction to stop something which the
4 Court said should take place and which took place pursuant to
5 a court order, which is on appeal.

6 So to the extent that they challenge the sale
7 order or the actual sale itself, that's on appeal. It's in
8 the district court right now. It's been briefed and a
9 decision will render in due course.

10 So the notion that somehow you can't raise re
11 judicata at a motion to dismiss, that is untrue. While it
12 can be raised as an affirmative defense, where it is clear of
13 record, especially when the matters took place before the
14 same court where this case has been filed, the Court may, in
15 fact, take judicial notice and render a determination.

16 They're asking to enjoin something which has
17 happened already. They're asking to challenge something
18 which was done pursuant to a court order, which they are
19 challenging in the proper forum, which is the district court.

20 The only thing I would take issue at in terms of
21 the Court's recitation of the facts, and maybe I misheard it,
22 was something in the timing. The adversary complaint was
23 actually filed before the sale order was (inaudible). The
24 complaint itself is dated December 2. The docket has it
25 filed on December 4.

1 So we have an adversary pending, which is trying
2 essentially to enjoin the sale. We then have a sale order
3 proceeding and that issue is decided and that issue is
4 decided as res judicata and collateral estoppel in terms of
5 all of the findings of this Court pursuant to which the sale
6 proceeded and closed.

7 So the reality is there can be no relief
8 essentially against the Trustee. I'm not commenting about
9 claims against other parties. And I don't know whether
10 they've responded or they haven't responded.

11 But with respect to the Trustee, the sale order
12 and the closing of the sale order is both a res judicata
13 effect and a mooted effect. And this Court is no longer in
14 a position to grant the relief that's requested because the
15 Court granted the opposite.

16 And this notion about somehow the Trustee is at
17 risk for having sold Rembrandt property, the Court made a
18 finding that the Trustee was not selling Rembrandt's
19 property. That is res judicata, as well, and that matter is
20 on appeal in the district court.

21 THE COURT: Mr. Coren, let me ask you this. If
22 the allegation is that, notwithstanding the admonition by
23 this Court, the Trustee is not selling a Rembrandt asset, if
24 the Trustee nonetheless transferred a Rembrandt asset, I
25 don't know that the sale order insulates the Trustee from any

1 actions that could be brought -- properly brought.

2 MR. COREN: Well, I think it does. And as a
3 matter of fact, what Your Honor hasn't been told by the other
4 side is this notion about SeeCubic, a Netherlands entity,
5 having been told some trade secrets and things of that sort.
6 If that is in fact true, that happened many, many, many, many
7 years ago and the Trustee didn't sell that.

8 What the Trustee sold, and you didn't hear that
9 mentioned, was the Trustee sold the equity interest that
10 Technoveda, the Debtor entity, had in downstream non-Debtor
11 entities. Allegedly, those downstream non-Debtor entities
12 had already gotten this technology. They had already been
13 told the trade secrets.

14 Well, if that's the case, they've had them for
15 many years and they weren't transferred by the Trustee. All
16 the Trustee transferred as relates to this downstream entity
17 is Technoveda's equity interest in it.

18 And that's why the Court says, look, Trustee is
19 not selling anything other than equity and a few items that
20 perhaps Stream had. As far as Technoveda, all it had was
21 equity interest in downstream entities. What those
22 downstream entities owned, didn't own, what they were told or
23 not told three years ago or five years ago, they've been
24 fighting for years.

25 There's a case pending as a district court in

1 Delaware fighting between these entities and Rembrandt. So
2 this is not new.

3 But the reality is whatever that action happened,
4 it happened many, many years ago with respect to a non-Debtor
5 entity whose assets were not sold. The only thing that was
6 sold was the equity in that entity, and that's why there was
7 a right preserved that if you think that entity, the non-
8 Debtor entity has improperly your trade secrets, you're
9 misusing your patents, go sue them.

10 That's not what the Trustee sold. He barely sold
11 his ownership interest in that entity, and that entity is
12 responsible for whatever that entity may be responsible for.

13 And that, I think, has not been focused on, but I
14 would submit to this Court that based on the findings of this
15 Court, the Trustee is immune from those claims. And I'll
16 also suggest that the -- nobody quite mentioned that the
17 district court action for which SSG sought and received
18 indemnification was filed in a court without subject matter
19 jurisdiction under the Barton Doctrine.

20 And there is a motion to dismiss that case because
21 that case when you're suing a Trustee and the Trustee's
22 professionals needed to be resolved in this court, not in the
23 district court.

24 So I suspect that case is going to disappear
25 pretty quickly. And that's all I have to say. Thank you.

1 THE COURT: Thank you, Mr. Coren.

2 MR. MICHAELS: Thank you. Chris Michaels for
3 Rembrandt 3D Holding, Limited. As a first matter, we've
4 acknowledged that this was brought under 12(b). These are
5 affirmative defenses. This is not the appropriate time. The
6 exceptions to those do not apply. We clearly -- we all agree
7 the sale order went through excluding Rembrandt assets.

8 The allegation against the parties involved is
9 that despite that direct order and that exclusion of
10 Rembrandt assets as part of that sale, they transferred them
11 anyway, right?

12 To be clear, Shadron Stastney was in control and
13 the sole director of SCBV at the time. He's the only one
14 that was providing any information back to, hey, this asset
15 I'm going to buy, don't worry about these Rembrandt claims.
16 Give me everything anyway.

17 And that's what the Trustee and SSG and Hawk and
18 everybody relied upon in making this transfer despite the
19 Court saying don't sell their assets, despite the Court
20 providing a TRO saying don't interfere with Rembrandt's
21 license, right? Stream is the one that has a license. Do
22 not interfere with that.

23 And if they had not done so, the Trustee could
24 resolve this entire case in 15 minutes. Type me an email.
25 Hey, these are the trade secrets I've demanded that they be

1 removed. Here they are. We're giving them back to you.
2 We're terminating the license, right? We're redacting your
3 license. And we're done with that portion of the case.
4 Here's the source code under your title and for your license
5 in 365(n). Done, right?

6 THE COURT: 365(n), though --

7 MR. MICHAELS: Yes.

8 THE COURT: -- right, only -- as I read it, only
9 protects the licensee when a license is rejected.

10 MR. MICHAELS: The settlement agreement with
11 Stream, part of the compensation we received was a license
12 back. So there was lots of discussion that Stream might not
13 be in a position to make its own TVs. That was in discussion
14 before Magistrate Parker. We said, well, we want a license
15 back so that we can fulfill ourselves, our ability to make
16 these TVs.

17 And we're like, let's talk what we really were
18 going to do is have them made, right? There are lots of, you
19 know, flex or various companies that'll assemble TVs and
20 iPhones, you know, around the world.

21 THE COURT: So I'm not sure I totally follow that,
22 and maybe that it was just a misunderstanding on my part,
23 which is fine. So do you -- the Rembrandt licensed
24 technology and trade secrets again, for purposes of the
25 complaint, I'm going to assume all those facts are true --

1 MR. MICHAELS: Right.

2 THE COURT: -- right? They've licensed trade
3 secrets to Stream, were they also licensed to SCBV?

4 MR. MICHAELS: Not directly. Stream was allowed
5 to have -- just like we would have the right, you know, we
6 got to a Section 10 of that agreement provided a license back
7 to Rembrandt. We could go have a flex or whomever make
8 products for us, right? And that's the standard in the
9 industry is to have assemblers put these things together.

10 THE COURT: So Stream got a license from
11 Rembrandt --

12 MR. MICHAELS: Yes.

13 THE COURT: -- that they then -- are you saying
14 sublicense to --

15 MR. MICHAELS: Well, they had the right to. It's
16 called a have-made license. They provided the -- SCBV had a
17 right to have products made and to work on engineering and
18 the firmware that would incorporate that and then transfer it
19 over to places in Asia and here in the States for making
20 chips that drive the TV. Somebody else was assembling the
21 TVs, and all that gets put together, and they sold the TV
22 that included Rembrandt's technology, under our license,
23 right? Now --

24 THE COURT: How did -- that's what I'm asking.
25 And maybe that's the --

1 MR. MICHAELS: Um-hum.

2 THE COURT: -- that's what I'm -- that's what I
3 understood Mr. Coren to argue, which was SCBV had a direct
4 license from Rembrandt to be able to put that into whatever
5 they were making.

6 MR. MICHAELS: Stream had a direct license to use
7 who it saw fit to make TVs. In this case, it included SCBV.
8 During the pendency of this bankruptcy, SCBV had a license
9 from Rembrandt, right? As soon as they transferred control
10 of our trade secrets and started having -- make use of, offer
11 for sale any of our patented inventions outside of Stream,
12 right, to go to SeeCubic, they started to infringe those
13 assets. They went outside the settlement agreement.

14 THE COURT: So let me make sure I understood,
15 right? Let me make sure I understand. So Rembrandt had a
16 license with Stream. Stream then had the right to use SCBV,
17 right, to make the products.

18 But I'm trying to address what Mr. Coren said at
19 the end, which was SCBV had a license with Rembrandt, right?
20 And that didn't move anywhere, right? That just went --
21 that's still with SCBV, right? That license is still with
22 SCBV. What changed was who owned SCBV, right?

23 MR. MICHAELS: Yes.

24 THE COURT: Okay. So that never moved, right?
25 That that always stayed where it was.

1 MR. MICHAELS: It was there.

2 THE COURT: Yep.

3 MR. MICHAELS: We sat in a courtroom, and you
4 know, Mr. Korn brings up that this wasn't litigated, right?
5 We had an agreement with Bart Barenbrug, and we had an
6 agreement with Mathu Rajan and Raja Rajan and Stream and his
7 confidentiality agreements, and trade secrets went back and
8 forth all the way back in 2010, right?

9 And the parties separated. We had no idea they
10 were using our technology until they brought out a TV. We
11 said, hey, wait a minute. That's got our stuff on it. And
12 we sued. And we went into mediation, and we settled that
13 case. And the settlement agreement said, these trade secrets
14 had a list, a Schedule A. These are the list of Rembrandt's
15 trade secrets. We are licensing these patents, right?

16 And we agreed their TVs were covered, and they had
17 the right to have it made, i.e., as long as SCBV was
18 controlled by Stream, they had a right to our technology.
19 Now, we argue we're also owed our license fees as they point
20 out.

21 THE COURT: Yeah. I think you're -- you keep
22 pushing me back to Stream, and I'm not at Stream. I'm at
23 SCBV, right? Did SCBV have a license from Rembrandt to
24 use --

25 MR. MICHAELS: Yep. They did. Stream had a

1 license.

2 THE COURT: Okay. I got it.

3 MR. MICHAELS: Had a license --

4 THE COURT: That's the part I -- okay.

5 MR. MICHAELS: As long as they control -- so when
6 Apple hires whomever in Asia to make their iPhone, right, as
7 long -- they have a license from Apple for all that
8 technology.

9 And as long as they're making an iPhone for Apple,
10 they're fine. It's when they go try to make an iPhone for
11 Samsung that, if they try to use Apple's technology, they're
12 absolutely infringed. They had an absolute right to have the
13 information. They just didn't have the right to use it for
14 somebody else.

15 And SCBV started using it for SeeCubic, not for
16 Stream. That's where we went off the rails here. These
17 parties facilitated that. They were told -- and they're
18 hiding under a sell order, which said do not sell. You are
19 not selling Rembrandt's assets. You are -- we're excluding
20 not just the IP, but the physical assets that hold that
21 source code.

22 They didn't do anything to remove that. The
23 Trustee would be in a radically different position here if he
24 had come forward and said, here's my letter to SeeCubic on
25 December 3rd or whenever the sale order went through,

1 ordering them to return all of Rembrandt IP, right? Here is
2 my letter to them ordering to transfer to you the source code
3 so that they can go build their TVs as they negotiated for,
4 right?

5 You took control of Stream's asset and ownership
6 of the code that went into make these TVs. And all of that
7 discussion with SSG's representative about whether or not
8 5,000 TVs are experimental TVs. With respect, 5,000 TVs is a
9 production problem, right? And they had the production code
10 that is on a server in California that in the papers, it's
11 alleged that Shadron Stastney walked into that entity and
12 took all the information and paid, you know, paid -- there
13 was some back bills owed and paid and walked away with all
14 that code, right?

15 So Shadron Stastney, SCBV, SeeCubic have access to
16 Stream assets that it needs to deliver what it owes to
17 Rembrandt, right? And, again, Rembrandt's claim against the
18 estate was down dramatically with our cooperation, I might
19 add, if they deliver to us what we're owed under Section 10
20 of the license agreement, if they get back our code, take it
21 out.

22 I've described the process. It's like running a
23 red line in a Word document. This is not a complicated thing
24 for those that understand how to do it. They --

25 THE COURT: So let me ask you this. I have not

1 found a case outside of IP law that would require a Trustee
2 to marshal non-estate assets. In fact, I think the
3 Bankruptcy Code says the exact opposite because the
4 Bankruptcy Code actually allows the Trustee to just abandon,
5 right, whatever the Trustee doesn't even believe would be
6 beneficial to the estate.

7 So what's the basis for, right, outside of IP law,
8 right, so I know that's -- I know I'm -- we're,
9 unfortunately, right, we're talking about two very
10 sophisticated, you know, federal statutes, right, that we may
11 be talking right past each other, right? And I apologize for
12 that. But under the Bankruptcy Code, right, what is the
13 principle that would require a Trustee, appointed under the
14 code, to marshal non-estate assets for a non-estate entity?

15 MR. MICHAELS: So IP law has hold. I'm looking at
16 our --

17 THE COURT: Yeah. No, I know. And that's why
18 it's unfortunate, but I'm asking you about bankruptcy law,
19 and you're asking me about IP law, right?

20 MR. MICHAELS: Fair enough. But I mean, we've put
21 it in our papers.

22 MR. THOMPSON: So, Your Honor, if I may, I can
23 assist here. I think it's exactly what your Honor is
24 pointing to is that there is a marshaling responsibility for
25 the Trustee. It's one that he did not conduct. And so he

1 did --

2 THE COURT: Yeah, but the assets.

3 MR. THOMPSON: That's correct, Your Honor. He
4 didn't do that, and so he couldn't tell what was estate
5 assets and what were not estate assets.

6 THE COURT: Sure, he did. He said he took
7 everything that he could get his hands on and said, I'm
8 selling.

9 MR. THOMPSON: Your Honor, we just vehemently
10 disagree with that intention. That actually did not happen
11 in any way, shape, or form, and we can demonstrate it.

12 THE COURT: Okay.

13 MR. MICHAELS: So the code section that we were
14 referring to was 704(a). And with respect, as I mentioned
15 just how easy it would be, the Trustee was testifying, and
16 was asked by Mr. Thompson about the production equipment.
17 And he said, having provided evidence that Stream had made
18 that purchase of production equipment for, you know, the
19 their production run in Asia, right?

20 So there was evidence put in that, oh, no, that
21 was transferred to SCBV, right? And we were calling that a
22 sham transaction as a way to try to get the assets out of the
23 bankruptcy estate. And the Trustee testified that it was a
24 distinction without a difference, right? He could order as
25 the controller of 100 percent of the shares of Technoveda, of

1 100 percent of the shares of UltraD cooperative, of 100
2 percent of the shares of SeeCubic BV, he could issue an order
3 saying that the production equipment could be transferred.

4 And the same is true here. He had the opportunity
5 to order the estate assets. Now we're not talking about just
6 Rembrandt's IP. We're talking -- well, technically, we had a
7 license to Stream's IP, the assets of the estate, right?
8 Undeniably, the assets of the estate.

9 Rembrandt is saying this is intellectual property
10 controlled by Stream that would allow Rembrandt to go make
11 its own TVs.

12 THE COURT: And why can't you do that?

13 MR. MICHAELS: We argue he can. And he had a duty
14 to do that.

15 THE COURT: No, no, why can't you do that, right?
16 Why can't you just use the license that you have to make
17 whatever you want?

18 MR. MICHAELS: The provision provided for us to
19 have that if Stream -- so all points and purposes, Stream is
20 now saying they can't make TVs, right? At all points prior
21 to that, prior to the Trustees, the first Trustee or,
22 controller of Stream that said they couldn't make TVs. Every
23 other time, it was we'll make them for you. We got it. We
24 got our vendors. We're negotiating this. We're negotiating
25 that.

1 And by the way, you know, this is new information
2 in the Courtroom that we're hearing for the first time or,
3 you know, in the last few months, I should argue, is that,
4 oh, hey, we weren't able to make these TVs.

5 Well, why not? I mean, the vendors are creditors
6 in the estate. It's not like Bill Homony was going to go,
7 you know, with hammer and nail and start making LCD panels,
8 right? They had a relationship with BOE. They had the lens
9 kind of -- you know, and we offered to manage that, right?

10 I used to run -- I was CEO of a flat panel
11 display, developmental flat panel display company. We had
12 the expertise to manage that process. People in this
13 courtroom, Mathu Rajan, Bud Robertson, other people had
14 managed that process for Stream to go out and make TVs.

15 And we even offered the pay value into the estate,
16 right? Not just the have made, but we would, you know, at
17 cost. But we would have said until we resolve everything, we
18 would have paid at margin. And, oh, by the way, once you
19 work production for us, you could sell these TVs to others.

20 No takers, right? I mean, what -- why, right?
21 This was all revenue positive, millions upon millions of
22 dollars of revenue to the estate. Part of what we asked for
23 is there was a \$160 million worth of purchase orders that
24 were brought in with the executives of those companies who
25 were making those orders. Bang. We would -- these are

1 valid. We will buy these TVs if made. We offered to help
2 facilitate those orders. All that revenue would have gone to
3 the estate. No taker, right?

4 And part of our quid pro quo, that is, look, we
5 want to be cooperative with you in working through the
6 management of this intellectual property.

7 THE COURT: Okay. But I don't understand. And if
8 I'm missing it, I apologize.

9 MR. MICHAELS: Um-hum.

10 THE COURT: Why aren't you just making your own
11 TVs with the license you have?

12 MR. MICHAELS: We don't have access. We've not
13 misappropriated intellectual property. We do not have access
14 to the firmware and the source code that would enable us to
15 do that, okay? We didn't --

16 THE COURT: And they haven't rejected the license
17 yet?

18 MR. MICHAELS: As far as I know, they have not.

19 THE COURT: Okay. So if and when they reject the
20 license, you'll be entitled to whatever rights you're
21 entitled to under 365(n), right?

22 MR. MICHAELS: Well, unless they don't have the
23 ability anymore to control --

24 THE COURT: Oh, no, no, no, right? 365(n) talks
25 about what happens in that situation.

1 MR. MICHAELS: So our complaint, one of the
2 remedies it seeks, is to force the situation. Now that
3 they're saying they cannot provide the TVs, hand over the
4 code so we can go make our own TVs. You can satisfy this
5 provision agreement, which --

6 THE COURT: Why don't you file a motion to compel
7 assumption of rejection of the license?

8 MR. MICHAELS: That is one of our options. We
9 don't necessarily want the agreement rejected, and we brought
10 this complaint, say, first and foremost. We're talking about
11 one section of our complaint, right, which is the 365(n)
12 component.

13 We also -- our paramount concern was that we did
14 not want control of our intellectual property being
15 transferred over to SeeCubic's control.

16 THE COURT: Okay. So let's deal with that, right?
17 I mean --

18 MR. MICHAELS: So we have

19 THE COURT: You say, right, that -- I mean, look.
20 I think we sort of talked about -- I am struggling with what
21 is the obligation of a chapter -- what is the obligation of a
22 trustee appointed under the Bankruptcy Code to marshal the
23 assets of a non-estate party, right? These are non-estate
24 assets you're talking about. You want the Trustee to marshal
25 non estate assets and turn them over to you.

1 As a matter of bankruptcy law, I just don't see
2 where that is. I understand it may be under IP law, and that
3 may be applicable non-bankruptcy law, and we'll talk about
4 that at the appropriate time. Why is that not packaged up as
5 part of your appeal that's in front of Judge Gallagher?

6 MR. MICHAELS: Well, some aspects of it are, but
7 what we were talking about here is what's before this Court,
8 which is there was a sale order that said don't transfer
9 Rembrandt's intellectual property to SeeCubic, right?

10 And Rembrandt waving its arms saying, our software
11 is on those secure servers. Remove our IP, and that's why we
12 brought this motion is send a letter to SeeCubic saying,
13 return the intellectual property that is Rembrandt's trade
14 secrets. And, no, it is not good enough that your engineers
15 who are benefiting from this just say, oh, we're not using
16 any of it.

17 This is in the face of -- as I said, we have
18 provided reference to the exact documents, the exact dates,
19 the exact individuals who were party to our trade secrets.
20 One of those trade secrets, out of a 75, is this liveliness
21 function in the TV. Now I'd asked during our status
22 conference, do you want to see one of these TVs, right? As I
23 said, we have three of them.

24 We would have brought one in. I would have turned
25 it on. I would have showed you liveliness. We sat in a

1 courtroom and determined that's Rembrandt's trade secret,
2 right? That is the firmware. And we said, show us that
3 you've taken that out, right, and that you haven't just
4 delivered property that you had in your possession.

5 The consignment case, Whitehall Jewelers, right?
6 That was litigated, and it was held the Trustee had the
7 obligation to remove those consigned goods. A license is as
8 close to a consigned good as you get. We gave you access to
9 our trade secrets. Under a license, they're our property
10 that you've been entrusted to hold. You need to return it
11 back to us. You certainly don't have the right to transfer
12 it over to SeeCubic.

13 And I would just finish with what is also clear is
14 the Trustee has an obligation to manage the estate, not to
15 create liability, right? We sat across from Stream's
16 executives, Mathu Rajan at CEO, Shadron Stastney at CFO, Raja
17 Rajan at COO. We have Bob Robertson in the back who was the
18 CEO of SCBV. All of those people will tell you Rembrandt's
19 trade secrets are in the, you know, are in the firmware that
20 goes into those TVs, right? And they've testified in court
21 to those things.

22 So we have absolute knowledge that it's there.
23 Send it back. And we offered over and over again to work
24 with him to remove, and he could have avoided what -- Shadron
25 Stastney set the value of this. \$400 times 3 million TVs

1 plus 6 million in cash, right? We have a -- listen, there's
2 our cap on what our obligations -- I mean, or what our
3 payments from this estate could have been, right, under the
4 license, unless he went and transferred to somebody he wasn't
5 licensed to transfer.

6 And we go back to what's the best, you know,
7 evidence of what the value is? \$1.2 billion, so say Shadron
8 Stastney, then CFO of Stream, now CEO of the buyer.

9 THE COURT: So -- yeah. Look. I mean, this is, I
10 think, one of the -- Mr. Michaels, this is the thing that I
11 sort of struggle with, I think, a little bit is I don't agree
12 as a matter of principle that the sale closing moots whatever
13 litigation you want to bring against the Trustee for a sale
14 of assets that he was not authorized to sell.

15 You're going to have to bring that here, right?
16 You can't bring that somewhere else under the Barton
17 Doctrine. But if you believe that there is a basis to bring
18 that, why don't you bring it? Like, I don't understand all
19 of these machinations of tell the Trustee not to sell what
20 they're not allowed to sell.

21 Why not just -- if you think that they're sell --
22 if you think that they sold something that they weren't
23 entitled to sell, bring -- let's -- file a complaint. Let
24 them answer. Let's get to discovery, and let's get it
25 decided. Either they sold it or they didn't, right? Like,

1 that's the part I'm struggling with, right? Because I think
2 all of this other stuff, frankly, is a bunch of shadow
3 boxing, right?

4 Like, either they sold it, and they're in
5 violation of what this Court said they were allowed to do, or
6 they didn't.

7 MR. MICHAELS: Well, Your Honor, with respect,
8 you're both -- they've been saying we did sell it because the
9 sale order protects us, and it's already happened. And, oh,
10 by the way, we didn't sell it, and the sale order didn't
11 include Rembrandt's assets. So if they didn't sell it,
12 right, give it back, right? Let's go through the process
13 that we've outlined in this brief, right?

14 You are --

15 THE COURT: Why would you be entitled to get it
16 back?

17 MR. MICHAELS: It's our trade secrets.

18 THE COURT: Sue them for damages.

19 MR. MICHAELS: I think that goes to the accept or
20 reject, you know, component that you said. If they've
21 rejected it, then give it back and we get to have our 365
22 end, which is --

23 THE COURT: But they haven't rejected it.

24 MR. MICHAELS: And so if what you're saying is
25 this needs to be brought after the motion to have them assume

1 or reject, right, I understand the argument. With respect, I
2 don't agree with it. We brought the case that we thought was
3 appropriate at the time and still do believe is appropriate,
4 and that the remedies requested are things that they can do
5 to avoid a potential \$1.2 billion claim against the estate.

6 I mean, it may not have an estate -- maybe he may
7 not have an obligation to marshal non-estate assets, but he
8 does have an obligation to administer the estate in such a
9 way as to avoid a \$1.2 claim.

10 THE COURT: I mean, okay. That's if you win. I'm
11 going to stop you right there because your colleagues are
12 totally going nuts over here, and they want to talk to you
13 about something. So I'm going to let them have the
14 opportunity to talk to you for a minute before I continue my
15 questions. Mr. Coren, let the two of them speak.

16 MR. COREN: I was going to say while they're
17 talking, how about if I talk?

18 THE COURT: No. That's not how that's going to
19 work.

20 (Inaudible conversation)

21 MR. MICHAELS: Your Honor, I think we brought this
22 motion, and I started my argument saying Rembrandt has tried
23 to proceed with as little litigation as possible. I'm a deal
24 guy; I'm not a litigator. I cut IP deals for a living.
25 That's pretty much what I do. And so we're looking -- we

1 would much prefer that this Trustee and that all the parties
2 involved handle this as an appropriate IP contract and how it
3 should be responded to, right?

4 I mentioned before, Phillips has a specific audit
5 provision. There's 23 some licenses that everybody who's
6 using this technology has access to or is working with
7 somebody who has licensed the Phillips technology, right?
8 And it says, when you're done with the license, we audit, we
9 make sure it's out.

10 We proposed the same thing, right? Rejected --

11 THE COURT: That was not in your original license.

12 MR. MICHAELS: In the settlement agreement, it was
13 not in. It is in the -- we proposed it as a resolution.

14 THE COURT: Oh, I understand that. I understand
15 that. And if the --

16 (Inaudible conversation)

17 THE COURT: -- want to have a settlement discussion
18 or you all want to have a mediation, you want to have a
19 settlement conference, however you all want to proceed, I'm
20 happy to facilitate that, right? But what I'm struggling
21 with is, right, one of the things that was said earlier
22 today, I don't remember exactly who said it, but, you know, I
23 can only deal with, right, what I'm presented with.

24 And I just wonder if there's a -- if what you're
25 trying to accomplish is a situation where you're saying, I

1 think that the Trustee has transferred an asset that they
2 were not -- that he was not entitled to transfer based on
3 these facts in accordance that I've determined pursuant to my
4 investigation under Rule 9011? I mean, I hate to say it, but
5 sue them.

6 MR. MICHAELS: So that is drafted, sitting on a
7 desk, but the -- in trying to avoid that, you know, part of
8 what I'm throwing out, right, is there are actions this Court
9 can take, there are actions the Trustee can take on their
10 own, which literally involve a letter, right? We are
11 ordering you as a Trustee. This was an excluded asset into
12 the order. Take out everything Rembrandt is saying is their
13 trade secrets. Give it back. They're licensed under 365(n).
14 Saves the Court immense headache. It saves all those
15 litigations, all those lawsuits, and I believe is goes with
16 the sale order.

17 THE COURT: I don't know that I can jump that. I
18 don't know that I can jump there. That's, I think, the
19 problem I'm having. I don't know that I can jump there right
20 away. I think what I'm struggling with is I understand what
21 your -- what the concern is. I really do. I mean, I'm not
22 an IP person other than I know what it stands for, and I use
23 my iPhone, right? But I am not, like, super technical.

24 But I understand what you're suggesting. I just
25 don't know that what I have in front of me is going to be

1 able to get you what you want, which is what you've been
2 talking about, right? Like, I want a listing of the source
3 code. And if -- I don't know that I can order him to do it,
4 number one.

5 But number two -- and the reason why I don't know
6 that I can order him to do it is because I don't see where
7 that exists under applicable bankruptcy law. Now, it might
8 exist under applicable non-bankruptcy law, but we can, you
9 know, and if there's something that you want to highlight for
10 me on that, we can talk about.

11 But if I can't do that, then the only thing I can
12 do is provide you a forum for redress of what bad acts the
13 Trustee has done if you prove it.

14 MR. MICHAELS: So if they said, we're a
15 construction company. We own some trucks in a garage, right?
16 Do you believe that this Court would have the ability to say,
17 give me VIN numbers on those trucks so we know where they
18 are, and we can look up, you know, UCC liens, et cetera?

19 THE COURT: I do.

20 MR. MICHAELS: Okay. How is this any different?

21 THE COURT: Because you're not asking for the
22 trucks they own. You're asking for the trucks they don't
23 own. You're asking me to ask him to get the VIN numbers of
24 the trucks in the garage next door.

25 MR. MICHAELS: I'm glad you went there because I

1 used the example in my brief of Hertz, right? We are the
2 equivalent of Hertz in this situation. There's a rental
3 contract sitting there, set of car keys with Hertz. There's
4 a garage, and they're saying, we just sold the house.

5 I mean, we don't know nothing about that car
6 that's sitting there except for that rental agreement we
7 signed and the keys.

8 THE COURT: Um-hum.

9 MR. MICHAELS: And I believe this Bankruptcy Court
10 would have in that context, give the car back to Hertz.

11 THE COURT: Absolutely disagree with you.

12 MR. MICHAELS: Okay. Then we are --

13 THE COURT: That's the fundamental difference. I
14 do not agree with that. I do agree that you could sue him
15 for converting your car. That's the difference.

16 MR. MICHAELS: And I understand what you're saying
17 is do that as opposed to --

18 THE COURT: Well, I'm not saying what to do. I'm
19 just saying I can't give you what I think you're asking for,
20 right, based on this because I don't see where there is a
21 principle under applicable bankruptcy law that says I can
22 compel the Trustee to marshal non-estate assets. That's what
23 I'm struggling -- I struggled with this all week last week
24 and over the weekend, and I was researching. And, I mean,
25 that's the part I'm struggling with.

1 MR. MICHAELS: I think your argument is accurate
2 with respect. Well, I understand your argument with respect.
3 We disagree because I do believe --

4 THE COURT: And we're allowed to disagree. That's
5 fine.

6 MR. MICHAELS: You're making your argument with
7 respect to Rembrandt's trade secrets. We have also brought
8 this issue under 365(n) since they're now saying they can't
9 and won't make TVs, give us the IP that we're entitled to
10 make our own, that's a Stream asset.

11 THE COURT: And that, you can compel them to do,
12 but not through this. There's a different mechanism to do
13 it. You have to move to compel them to assume or reject the
14 license.

15 MR. MICHAELS: And you're saying that right only
16 exists if they --

17 THE COURT: Well, you're a licensee. 365(n) only
18 entitles you to those 365(n) protections in the event of a
19 rejection by the licensor of the asset.

20 MR. DEMARCO: Your Honor, if I may.

21 THE COURT: Yes.

22 MR. DEMARCO: So there's a couple of things that I
23 want to address very quickly. First off, my understanding is
24 that there was a document filed suggesting that all of these
25 contracts were rejected. And I believe that was filed some

1 time ago. Opposing counsel, you correct me if I'm wrong, but
2 that's my understanding.

3 The other issue, Your Honor, raised that I want
4 to -- I feel I need to address because of its particular
5 import is when it comes to the trade secrets themselves.

6 If the trade secrets are, you know, in the
7 possession of someone who is not bound by the license, they
8 are destroyed. It's an irreparable harm, so say it the
9 Supreme Court, Third Circuit, et cetera. That is something,
10 I think, that distinguishes this property from other
11 potential assets.

12 Your Honor is asking, you know, how can we
13 marshal, non, you know, non-Debtor property? The fact of the
14 matter is there's control of these. There are in servers
15 that are controlled by this company, and --

16 THE COURT: But I looked at your complaint, and
17 Count 1 is the only one against the Trustee, and it doesn't
18 seek damages for trade secrets.

19 MR. DEMARCO: Well, that's right, Your Honor. We
20 seek injunctions. Damages -- so the damages for the trade
21 secrets, what we're trying to do is prevent them from being
22 destroyed. Damages occur if the genie is already out of the
23 bottle. Then we're going to try and recoup what we can, but
24 we're seeking to protect it.

25 We can't put that cat out of the bag. That's what

1 protects the value. It's an irreparable harm that we face.

2 MR. MICHAELS: And this estate doesn't have any
3 liquidity to cover the damages. You're right. I mean,
4 Andrew stated it exactly correct. And I believe earlier in
5 my closing arguments, I was saying we are trying to prevent
6 this harm. We do not want more litigation. I do not get --
7 I'm not pinning a settlement -- I mean, excuse me, a, you
8 know, a judgment for 1.2 billion my wall and saying, yeah, I
9 got precisely \$0 from my client, and my fee is (inaudible),
10 right?

11 We're trying to say there's an opportunity here
12 for the Trustee to have done the right thing, which is to --
13 look, you want to buy the assets without Rembrandt's IP?
14 Great. Take it out, right? Protect the estate. You don't
15 marshal the assets of the estate, separate it from non-estate
16 property.

17 I think Whitehall applies here, and we've been
18 citing that all over our brief, beating that drum, is that we
19 are consigned goods. The argument would be they had no duty
20 as the consignee to have protected the jewels that were put
21 into the rings, right? Well, it's not our property, right?

22 This is -- they took on a duty of our license, and
23 they went past that. And I've gone on, and we can go back
24 and forth. Okay. Thank you for your time.

25 THE COURT: Thank you very much. Yes, Mr. Coren.

1 MR. COREN: Thanks. Number one, as your Honor
2 points out and which is obvious when you read the complaint,
3 the current complaint is defective. It was done before there
4 was a sale order, before all the events that overtook it
5 occurred. And I understand that. They filed that first.
6 And the reality is it was overtaken and mooted out and res
7 judicata'd out by the sale order and the sale.

8 So what should they do? They should dismiss it
9 against the Trustee. If they want to proceed against the
10 other defendants and they have the ability to do that, we're
11 not commenting. What did they do? No. Instead, they want
12 to keep and ask this Court to give relief, which makes no
13 sense and you can't give.

14 Stop a sale, which you have already ordered to
15 occur and which has, in fact, occurred. It's a non sequitur.
16 Then what do they do? They bring another lawsuit against the
17 Trustee in the wrong forum. They bring it into district
18 court. They violate the Barton Doctrine. We filed our
19 motion to dismiss.

20 If they really have a claim that they really think
21 they have, they need to bring the right claim in the right
22 court. And this is the right court. And I would suggest to
23 Your Honor in terms of this so called license, very shortly
24 the Trustee will be commencing an action to avoid that
25 license. It's a collusive document. It's a fraudulent

1 transfer. It's of zero value and the claim is worthless, the
2 \$1.2 claim. We will tee that up shortly.

3 That's the right way to do it. They want to move
4 for us to reject or whatever. We're going to be filing an
5 adversary to avoid it and to do some other things against
6 Rembrandt and others.

7 And that will come soon. But this, we're here
8 about this complaint, and this complaint is fatally defective
9 and should be dismissed.

10 THE COURT: Thank you, Mr. Coren.

11 I'll give you the last word.

12 MR. DEMARCO: Judge, very briefly on the subject
13 of the Barton Doctrine. It's come up several times. Just
14 there's a very clear exception to the Barton doctrine, which
15 is when the Trustee acts ultra vires. Our allegation is that
16 non-Debtor property has been taken and sold. That is a
17 classic example of an ultra vires exception to the Barton
18 Doctrine.

19 So, you know, and that's very clear from our
20 pleadings. Like, this is not something that's coming up for
21 the first time. I just wanted to raise that here.
22 Obviously, that'll be adjudicated at a totally separate
23 setting.

24 THE COURT: Not going to be my problem because if
25 you're all suing in a court other than the Bankruptcy Court,

1 somebody's going to figure out the application of the Barton
2 Doctrine. It's not going to be me. But if it comes back
3 here, we'll deal with it.

4 MR. DEMARCO: Yes, Your Honor. I just wanted to
5 address that.

6 MR. COREN: I forgot to say one thing, Your Honor.
7 I apologize. We're crossing two issues. Number one, did we
8 sell their property? It's pretty clear we didn't sell their
9 property, so says the Court, so say we.

10 The next question is, well, if we didn't sell it,
11 did we transfer it? Like, that's something different. But
12 what you're hearing is the transfer, if it occurred at all,
13 had nothing to do with the sale. It occurred long before in
14 terms of a relationship between Rembrandt, Stream, and the
15 non-Debtor subsidiaries.

16 Whatever they got, they got years ago. It had
17 nothing to do with the sale. We didn't transfer anything as
18 part of the sale. What they want us to do is have Your Honor
19 enter an order to retrieve something we didn't transfer and
20 we didn't sell.

21 THE COURT: All right. This matter is pending at
22 Rembrandt 3D, Limited versus Homony, et al, Adversary Number
23 24-142. This matter comes before the Court pursuant to the
24 Chapter 11 Trustee's 12(b)(6) motion to dismiss for failure
25 to state a claim upon which relief can be granted, which is

1 filed at Docket No. 3 by William A Homony in his capacity as
2 Chapter 11 Trustee of the bankruptcy estates, Stream TV
3 Networks, and Technoveda Media, Inc.

4 In addition to the motion, the Court has received
5 and reviewed the following pleadings and responses. The
6 Plaintiff, Rembrandt 3D Holdings, Limited's response to
7 Chapter 11 Trustee 12(b)(6) motion to dismiss for failure to
8 state a claim upon which relief can be granted filed at
9 Docket No. 4.

10 The Court held argument on the motion on April
11 14th, at which time the Movant and the Respondent made oral
12 argument. The Court thanks the parties for their strong
13 advocacy, their well-prepared materials and their well-
14 presented oral argument. The matter is now right for
15 disposition.

16 The following constitutes the Court's findings of
17 fact and conclusions of law pursuant to Federal Rule of
18 Bankruptcy Procedure 7052 as incorporated by Federal Rule of
19 Bankruptcy Procedure 9014. Court has jurisdiction pursuant
20 to 28 USC 1334 and the standing order of reference of the
21 Eastern District Of Pennsylvania as the matter arises in and
22 or is related to a case under the Bankruptcy Code.

23 Venue is proper in this district pursuant to 28
24 USC 1408 and 1409. The matter presented by the motion is a
25 core matter pursuant to 28 USC Section 157(b). To the extent

1 that the matter is deemed non-core and/or the Court is
2 without constitutional authority to render a final decision
3 on the motion, the following constitutes the Court's report
4 and recommendation in accordance with 28 USC Section 157(c).

5 Pursuant to the motion, the Movant seeks dismissal
6 of the claims against the Trustee because the claims against
7 the Trustee are barred by the sale order and the claims
8 against the Trustee are mooted by the sale closing.

9 In response, the Respondent argues that the motion
10 to dismiss is not a proper vehicle to assert res judicata and
11 the motion cannot insulate the Trustee from his duty to
12 separate and marshal non-estate assets and his duty to
13 account to Rembrandt.

14 Based on the record before the Court presented in
15 the complaint and reviewed in connection with the motion to
16 dismiss and the response, together with the review of the
17 docket in the adversary proceeding and the docket in the main
18 bankruptcy case taken as a whole, the Court recites the
19 following facts taken as true for purposes of resolving the
20 motion only.

21 Unless otherwise stated, the facts are taken from
22 the complaint, which is found at Adversary Docket No. 1.

23 The complaint nominally seeks a declaratory
24 judgment and an injunction against various defendants,
25 including the Chapter 11 Trustee, the Debtors, SeeCubic, Inc,

1 SCI, SeeCubic BV, SCBV, Hawk Investments, Limited, and the
2 CEO of SCI and SCBV personally. Chapter 11 Trustee is the
3 only movant here.

4 Upon further review of the complaint, there are
5 five counts enumerated. Count 1 is the only count directed
6 at the Trustee and only seeks an injunction/order. There is
7 no prayerful relief associated with Count 1.

8 However, when read in conjunction with the
9 complaint as a whole, the relief sought related to the
10 Trustee appears to seek a finding that, one, the Rembrandt
11 property is embedded within the Debtor's assets; two, an
12 injunction preventing the sale of the Debtor's assets until
13 the Trustee has determined what assets are Rembrandt and
14 removed therefrom; three, an order requiring the Trustee to
15 remove Rembrandt assets from the Debtor's assets; and four,
16 an order requiring the Trustee to transfer source codes to
17 Rembrandt pursuant to Section 365(n) of the Bankruptcy Code.

18 There does not appear to be any request for
19 monetary damages asserted against the Trustee.

20 Moreover, this motion only relates to the count
21 directed at the Trustee. The Court does not address the
22 other counts directed at the other parties since those
23 parties have not answered or otherwise moved.

24 However, the Court questions whether it would have
25 constitutional authority to enter judgments in the bilateral

1 litigation between two non-estate parties.

2 Factually, the complaint recites a significant
3 history of litigation between Rembrandt and the Debtors,
4 which predated the appointment of the Trustee. The complaint
5 further details actions that were taken by the Trustee in
6 order to prevent certain parties, including those that are
7 named as defendants herein from exploiting certain of the
8 Debtor's technology, which may have also included technology
9 of Rembrandt.

10 Finally, the complaint details the actions
11 undertaken by the Trustee in resolving disputes with certain
12 of the other named defendants, namely Hawk, SCI, SCBV, and
13 the resultant entry of the sale procedures order and the sale
14 order.

15 The settlement order, the bid procedures order,
16 and the sale order were all approved by the Bankruptcy Court
17 after hotly contested issues in very specific orders. Those
18 orders are presently the subject of pending appeals before
19 United States District Judge Gallagher at Case Numbers 24-
20 6397, 24-6498, 24-6618, and 25-751.

21 The Court takes judicial notice of the following
22 items from the main bankruptcy case. In connection with the
23 objections raised by Rembrandt to the Trustee's proposed
24 bidding procedures, the Trustee and Rembrandt amended the
25 sale offering documents presale to specifically identify

1 Rembrandt's assertion of its ownership rights at Docket No.
2 810.

3 The Court entered an order approving the sale of
4 substantially all of the Debtors assets to SCI over the
5 objection of Rembrandt at Docket No. 876. In that order, the
6 Court found that the sale was in the best interest of the
7 estate and further found that SCI was a buyer in good faith
8 for purposes the sale transaction at Paragraph 7.

9 The sale order also had a limitation or a
10 preservation of Rembrandt's rights to pursue litigation
11 against parties violating their intellectual property at
12 Paragraph 5.

13 The Court approved the sale and specifically the
14 terms of the APA, which would govern the sale. Section 3.4
15 of the APA, which is attached as an exhibit to the sale order
16 contains the following acknowledgment. The buyers
17 acknowledge that certain intellectual property may be subject
18 to superior rights of Rembrandt as licensor and that the
19 sellers, the Trustee, cannot transfer any interest in the
20 transferred assets that is not owned by the sellers.

21 Further, Section 1.2(j) of the APA contains a
22 specific exclusion that items that are subject to a Rembrandt
23 license are excluded assets and are not within the definition
24 of transferred assets for purposes of the sale transaction.

25 Finally, the sale order is supported by an opinion

1 of this Court, Docket No. 916, in which the Court relates the
2 history and the resolution of the objections that were
3 previously raised by Rembrandt to the settlement motion, to
4 the bid procedures motion, and to the sale motion.

5 Of particular note is the objection raised by
6 Rembrandt seeking a prior determination that the Trustee is
7 prevented from selling any assets which are owned by
8 Rembrandt.

9 Importantly, in the opinion that was issued in
10 support of a sale, the Court made very clear, "Rembrandt
11 asserts it . . . has intellectual property that may not be
12 transferred to SeeCubic. To the extent those rights exist,
13 they are excluded under the APA." That's at Docket No. 916,
14 Page 21.

15 Therefore, in the ultimate determination by the
16 Court, the court has already concluded that the APA, which
17 was approved by the sale order, does not transfer any
18 Rembrandt-owned assets.

19 Based on the following facts, the Court takes up
20 the motion to dismiss. Federal Rule of Civil Procedure 12
21 (b)(6) incorporated and made applicable to adversary
22 proceedings by Federal Rule of Bankruptcy Procedure 7012(b)
23 requires dismissal of a complaint for "failure to state a
24 claim upon which relief can be granted."

25 When faced with a motion to dismiss for failure to

1 state a claim, the Court must review the complaint to
2 determine whether there are sufficient factual matters
3 alleged, which, if true, could state a claim for relief that
4 is plausible on its face.

5 Bell Atlantic Corp versus Twombly, 550 U.S. 544 at
6 Page 540 from 2007, and Ashcroft v. Iqbal, 556 U.S. 662 at
7 678, 679 from 2009.

8 The Court must assume that all of the facts pled
9 are true and draw any inferences in favor of the plaintiff to
10 determine whether the complaint alleges a plausible claim for
11 relief. See, Suiter versus University of Pennsylvania, 923
12 F.3d 320 at 325 from the Third Circuit in 2019.

13 While the complaint need not recite the legal
14 elements of each cause of action per se, the complaint must
15 nonetheless plausibly allege facts which would support all of
16 the relevant elements of a particular cause of action pledge.
17 See, generally, 2, Morris Federal Practice, Section 12.34,
18 Clause 4(a) and the cases that are collective therein.

19 On a motion to dismiss, the party seeking
20 dismissal bears the burden of showing that there is no claim
21 stated. Kehr Packages Inc. v. Fidelcor, Inc., 926 F.2d. 1406
22 at Page 1409 from the Third Circuit at 1991.

23 In considering a motion to dismiss, the Court is
24 constrained to review only the facts alleged in the
25 complaint. The Court may not generally consider evidentiary

1 submissions outside of the pleadings. One exception is of
2 particular note here.

3 The Court may consider facts that are subject to
4 that are subject to judicial notice, including docket events
5 of judicial proceedings. Southern Cross Overseas Agencies,
6 Inc. v. Wah Kwong Shipping Group, Limited, 181 F.3d 410 at
7 Pages 426 and 427 from the Third Circuit in 1999, which holds
8 that a court may take judicial notice of public record,
9 including judicial proceedings, and thus a court can take
10 judicial notice of a court's opinion for the existence of the
11 opinion and its statements, but not for the facts presented
12 therein.

13 With these general principles in mind, the Court
14 reviews the counts that are plead against the Trustee in the
15 complaint. As noted, the only count directed at the Trustee
16 is Count 1, and it nominally seeks a finding that Rembrandt
17 property is embedded within the Debtor's assets, an
18 injunction preventing the sale of the Debtor's assets until
19 the Trustee has determined what assets are Rembrandt and
20 removed therefrom, an order requiring the Trustee to remove
21 Rembrandt assets from the Debtor's assets, and an order
22 requiring the Trustee to transfer source codes to Rembrandt
23 pursuant to 365(n) of the Bankruptcy Code.

24 The Trustee suggests that the principles of res
25 judicata and/or claim for seclusion bar the claims asserted

1 against the Trustee in the complaint as a matter of law.
2 Prior to addressing that, the Court takes up the issue of
3 whether or not Section 365(n) of the Bankruptcy Code is
4 applicable. Given that there has not yet been a rejection of
5 a license, that section is not applicable, and the Court
6 cannot make an advisory opinion as to whether the obligations
7 arise under 365(n) until such time as there is an order
8 seeking rejection of that license.

9 With respect to the application of res judicata
10 and claim preclusion, it can be determined on a motion to
11 dismiss from the face of the complaint or from facts that are
12 subject to judicial notice. See Davis versus Wells Fargo at
13 824 F.3d 333 at Pages 341 to 344 from the Third Circuit in
14 2016, holding that the face of a complaint demonstrated that
15 material facts were identical to the first action, so the
16 district court properly dismissed it under 12(b)(6) of the
17 Federal Rules of Civil Procedure based on claim preclusion.

18 See also Day versus Moscow, 955 F.2d 807 at PG&E
19 811 from the Second Circuit in 1992, which dismissed the
20 complaint based on the affirmative defense of res judicata.
21 Giragosian versus Ryan, 547 F.3d 59 at Page 66 from the First
22 Circuit in 2008, permitting the reliance on an earlier
23 judgment for purposes of determining res judicata without
24 converting the motion to dismiss to a motion for summary
25 judgment.

1 And see also Buck versus Thomas M. Cooley Law
2 School, 957 F.3d 812 at page 816 from the Sixth Circuit in
3 2010.

4 The United States Court of Appeals for the Third
5 Circuit has articulated the principles applicable to the
6 application of res judicata or collateral estoppel. Claim
7 preclusion requires a showing that there has been a final
8 judgment on the merits in a prior suit involving the same
9 claim and the same parties or their privities. That's from
10 The United States versus 5 Unlabeled Boxes, 572 F.3d, 169 at
11 173, Third Circuit, 2009. Citations omitted.

12 Further, collateral estoppel, which is also known
13 as issue preclusion, requires a previous determination that,
14 one, the identical issue was previously adjudicated, the
15 issue was actually litigated, the previous determination was
16 necessary to the prior decision, and the party being
17 precluded from relitigating had the full opportunity to
18 present in the prior action. The United States v. Five
19 Unlabeled Boxes, 572 F.3d 169 at Page 173, and citations are
20 otherwise omitted.

21 Like in Five Unlabeled Boxes, the parties here use
22 the term res judicata and collateral estoppel nearly
23 interchangeably, but the Court will use the term res judicata
24 since it encompasses both claim and issue preclusion.

25 The complaint details the actions that were

1 undertaken by the Trustee in resolving the disputes with
2 certain of the other defendants, namely Auk, SCI and SCBV and
3 the resulted bid procedures and sale procedures which
4 resulted in court orders.

5 The Court takes judicial notice of the sale order
6 approving the sale of substantially all of the Debtors assets
7 over the objection of Rembrandt at Docket No. 876 as well as
8 the opinion that was entered by the Bankruptcy Court at
9 Docket No. 916.

10 The Court reiterated the history and the
11 resolution of the objections that were raised by Rembrandt to
12 the settlement motion, to the bid procedures motion, and to
13 the sale motion.

14 Of particular note is the Court's disposition of
15 the objection filed to the bid procedures order and renewed
16 at the sale order whereby Rembrandt sought, one, a
17 requirement that the Trustee marshal non-estate assets and an
18 assertion that the sale should not be approved because the
19 purchasing parties were violating the TRO that was issued in
20 Case Number 23-57, which has since been dismissed and the TRO
21 has since expired.

22 A comparison of the parties and the issues raised
23 in the disposition of the settlement order, the bid
24 procedures order, and the sale order with the relief that is
25 sought against the Trustee in Count 1 makes the application

1 of res judicata immediately apparent.

2 Undisputably, Rembrandt and the Trustee were both
3 parties to the prior determination in the main bankruptcy
4 case and are two of the parties in this adversary proceeding.

5 In this adversary proceeding, Rembrandt seeks an
6 injunction preventing the sale of the Debtor's assets and an
7 order requiring the Trustee to remove any Rembrandt assets
8 from the Debtor's assets prior to sale. Again, those were
9 identical issues raised and addressed in connection with the
10 disposition of the bid procedures order and the sale order.

11 Even further, the issue was plainly addressed in
12 the sale order. Sale orders specifically approved the APA.
13 See Paragraph 3 of the sale order. Section 3.4 of the APA,
14 which is attached as an exhibit to the sale order, contains a
15 very clear and plain acknowledgment.

16 Buyers acknowledge that certain intellectual
17 property may be subject to superior rights of Rembrandt as
18 licensor and the sellers cannot transfer any assets in the
19 transferred assets that is not owned by the sellers. Section
20 1.2(j) of the APA contains a specific exclusion that items
21 that are subject to a Rembrandt license are excluded assets
22 and are not within the definition of transferred assets for
23 purposes of the sale transaction.

24 Further, in the opinion the Court directly
25 addressed the objection repeatedly raised by Rembrandt, which

1 sought a prior determination that the Trustee is prevented
2 from selling any assets that are owned by Rembrandt.
3 Importantly, in the opinion issued in support of the sale,
4 the Court made very clear, Rembrandt asserts it has
5 intellectual property that may not be transferred to
6 SeeCubic.

7 To the extent those rights exist, they are
8 excluded under the APA. See Document 916 at Page 21.
9 Therefore, in the ultimate determination by the Court, the
10 Court has already concluded that the APA, which was approved
11 by the sale order, does not transfer any Rembrandt owned
12 assets.

13 In addition to the orders entered by the
14 bankruptcy court, which the Court takes judicial notice of,
15 the Court also takes judicial notice of these entries in the
16 main bankruptcy case that suggests that the sale closed,
17 although the Court does not rely on the mootness as the basis
18 for the current disposition here.

19 So whether we are talking about claim preclusion
20 or issue preclusion as subsets of res judicata, the identity
21 of the parties, the identity of the claims and issues
22 elements of res judicata are clearly met. Bankruptcy Court's
23 determination in overruling Rembrandt's request from
24 marshalling exclusion sought here, as in the bid procedures
25 order and the sale order, were also necessary for the Court's

1 prior determinations, so that element, too, is met.

2 Therefore, the only remaining question is whether
3 the adjustments are final for purposes of the application of
4 res judicata. Court recognizes that Rembrandt is a party to
5 various appeals pursuant to Part VIII of the Federal Rules of
6 Bankruptcy Procedure, which are presently pending before The
7 United States Bankruptcy Judge Gallagher, namely No. 24-397,
8 which relates to the denial of the motion for reconsideration
9 of the settlement order, Case No. 24-6498, which relates to
10 the entry of the bidding procedures order, Case No. 24-6617,
11 which relates to the entry of the sale order. And those
12 three appeals have all been fully briefed, as well as Case
13 No. 25-751, which relates to the order denying the motion to
14 stay pending appeal, which briefing is currently underway.

15 Federal court judgments can be a basis for
16 preclusion, despite pending or future appeals. See Huron
17 Holding Company versus Lincoln Mine Operating Company 312
18 U.S. 183 at page 189 from 1941, noting that an appeal does
19 not "detract from the decisiveness and finality of a
20 judgment." See also generally restatements second of
21 judgment, Section 13, Comment F, and 18 in Moore's Federal
22 Practice Civil, Section 131.03.

23 Since the pending appeals do not prevent the Court
24 from relying on the bidding procedures order and the sale
25 order for res judicata purposes in this instance, that

1 element, too, is met.

2 For all of these reasons, the Court concludes that
3 based on the face of the complaint and judicial notice taken
4 of the prior entries in the main bankruptcy cases highlighted
5 herein, claims asserted by Rembrandt against the Trustee in
6 Count 1 or otherwise throughout the complaint are barred by
7 the doctrine of res judicata. And as a result, Count 1
8 specifically and any claims asserted against the Trustee are
9 hereby dismissed.

10 The Court otherwise reserves the right to amend
11 and supplement this opinion as permitted by Local Rule 8003-1
12 and an appropriate order will issue. Parties have any
13 further questions?

14 MR. COREN: No, sir. Thank you.

15 MR. MICHAELS: Thanks, Your Honor.

16 THE CLERK: We are at -- sorry.

17 THE COURT: Yes, I'm sorry.

18 MR. MICHAELS: Your Honor, as stated earlier,
19 Rembrandt has sought at all times to reduce the amount of
20 litigation, and it feels like this decision, although I
21 understand it and in a position to, obviously, have to accept
22 it, just breeds the potential for more litigation. I think
23 as you -- to quote yourself, you were saying, well, if the
24 Trustees already transferred the assets, you know, sue him
25 for that transfer. And of course, this motion was filed on

1 December 4th before that transfer had occurred.

2 But you also mentioned your willingness to
3 facilitate mediation. I personally believe that would be
4 helpful. I have good amount of success with mediation. I
5 think it would be productive if -- they now that Stream has
6 access to patent counsel, if we were to sit in a room and go
7 through.

8 And I do this all the time, which would normally
9 be an audit procedure that takes 15 minutes to a few hours.
10 And if the other party is willing to agree, we could
11 hopefully resolve our differences here. But if there's a
12 constructive way to do that, I'd like to explore.

13 THE COURT: If the parties are willing to take the
14 benefit of our Court mediation program, you're more than
15 happy to have that discussion, and let us know, and we can go
16 through that process. We can go through the order process.

17 I did that a lot in practice before I came on the
18 bench, so I'm happy to help facilitate that if there are
19 parties that are -- if we can find somebody who's willing to
20 do it. If you're not able to find somebody who's willing to
21 do it, I would be willing to discuss with you all whether you
22 would find it appropriate if we had a settlement conference
23 including with me. But that's a discussion that I think you
24 all have to have first, and then we can talk about what the
25 appropriate next steps are.

1 I did hear Mr. Coren say they anticipate to be
2 filing another complaint. I don't know if that's going to be
3 the right avenue, but I certainly welcome that if the parties
4 want to have that discussion, and I'm happy to try and
5 facilitate that.

6 MR. COREN: Appreciate that, Your Honor. And I do
7 believe until we file that, which I advise the Court we will
8 file, it'd be premature to consider it. I think we'll try to
9 do that in due course. We'll try to accelerate it. And then
10 once we do that, we can take a step back and look at the
11 landscape and see whether some new resolution makes sense.

12 THE COURT: You have a lot of appeals going on,
13 and I know that there's other things coming down the pipe. I
14 know we got another one in -- got another issue that we're
15 going to be taking up, you know, shortly, so I understand.

16 MR. COREN: Thank you, Your Honor. Are we meeting
17 right now?

18 THE COURT: Well, so that's what I was going to
19 suggest. So I have 1:30. My staff hasn't obviously taken a
20 break, which I would like to give them the opportunity to do.
21 As those of you that are local know, this isn't the best area
22 for things that are local to get something to eat at, but we
23 can come back in an hour or shorter depending on what you all
24 want.

25 I will say this. I don't know how long we expect

1 this afternoon to take. And just so you have the benefit of
2 my thinking and my schedule, I can probably go till about --
3 Barbetta (phonetic), what do we think? 5:00-5:30?
4 That's probably about the max. And I'll have -- I'll just
5 have to let the marshals downstairs know.

6 So I don't know if you all think we can resolve --
7 we can get through all the witnesses that you need to get
8 through this afternoon.

9 MR. SWICK: I don't think that -- no. If we take
10 an hour break and then come back for argument and witnesses,
11 I don't -- I don't think it'll be that quick.

12 THE COURT: Okay. How many witnesses do you
13 anticipate calling? I did notice on your witness list that
14 there were several, but I --

15 MR. SWICK: Yeah, all those witnesses were
16 actually going to call.

17 THE COURT: Okay.

18 MR. SWICK: Yeah.

19 THE COURT: Mr. Coren?

20 MR. COREN: We're going to call one that's on
21 their witness list --

22 THE COURT: Okay.

23 MR. COREN: -- so that and the Trustee. And we
24 have submitted already the Trustee's testimony by
25 declaration. I don't know if Your Honor has seen it yet or

1 not.

2 THE COURT: I did see it.

3 MR. COREN: And, of course, we'll supplement it
4 just a touch and be available for cross-examination. They
5 have it since we filed it some point last week, so that will
6 accelerate it a little bit, I think.

7 THE COURT: Okay. Why don't we plan on this? Why
8 don't we plan on coming back at -- 2:30 is less than an hour,
9 shortly less than an hour. It's 1:30 -- I have 1:40 right
10 now, 1:37.

11 MR. COREN: Your Honor, since it looks like we're
12 not going to finish, perhaps we take the hour, and I don't
13 think that ten minutes is going to matter whether we finish
14 today.

15 THE COURT: That's fine. Like I said, I'm going
16 to have a hard stop at --

17 MR. SWICK: Oh, yeah, yeah, yeah. I understand.
18 Unless you --

19 MR. COREN: I think, too, we can see on the
20 first -- how late we start and how long goes. And we could
21 also just, like, end at 5:00. If we're going to have to
22 readjourn anyway, we have to readjourn, so there's no reason
23 to press late and all that.

24 THE COURT: Here's what I'm going to do. Do you
25 all -- are you all planning -- I know Mr. Michaels is

1 leaving, but are you all hanging out?

2 MR. SWICK: I had a 6:30 flight, which is just not
3 going to happen. So I'll just book that in the hour and fix
4 that and stay another night.

5 THE COURT: Okay. I have the morning tomorrow,
6 but I have to be done by 12:00. So and I can start -- my
7 staff will not love me. I can start as early as you want.

8 MR. SWICK: I don't -- I don't think we're going
9 to need, like, ten hours. I think we -- if we get started at
10 9:00/9:30, we're going to be done by noon tomorrow. With
11 that -- we'll see how fast it goes --

12 THE COURT: Okay.

13 MR. SWICK: -- when we --

14 MR. COREN: I think that's likely.

15 THE COURT: All right. So why don't we do this?
16 Why don't we plan on coming back at 2:45? We'll go until
17 5:30 tonight --

18 MR. COREN: Okay.

19 THE COURT: -- with the expectation that we can
20 use the morning as needed. I do strongly suggest to the
21 parties, if you want to proffer your direct testimony, you
22 can do that. It does streamline it a little bit. If you
23 want to put your witness on and go through direct the
24 proverbial old school way, we can do that, too. It just
25 takes a little longer.

1 MR. SWICK: Yeah, I mean, we haven't been allowed
2 to put a witness on in, like, many, many hearings. I really
3 do want to put my witness on --

4 THE COURT: Okay.

5 MR. SWICK: -- and go through it, but we will be
6 as efficient as possible. I promise you, Your Honor.

7 THE COURT: Okay.

8 MR. SWICK: I totally understand.

9 THE COURT: All right. Well, I thank the parties,
10 for their hard work to date, and I'll look forward to seeing
11 you at 02:45.

12 MR. SWICK: Thank you.

13 (Off the record at 1:39 p.m.)

14 (On the record at 2:45 p.m.)

15 THE BAILIFF: All rise.

16 THE COURT: Okay. So I think we are here on the
17 application of Visual Semiconductor for administrative claim.
18 I did have the opportunity to review the various materials,
19 including the motion at Docket 966, the opposition at 982,
20 and the reply at 991.

21 Are there any other matters that the Court should
22 be aware of before proceeding? Okay.

23 I'll leave it to you. I don't need opening
24 statements, but if you want to use, you know, the openings --
25 if you want to use time on an opening statement, be my guest.

1 But I think we can jump right into the testimony, given that,
2 I mean, I generally understand the issues,

3 MR. SWICK: Yeah. I would -- I would love to do
4 it, but we're running a little late on time. And I -- Mr. --
5 our first witness lives in Nevada, so I don't want him to
6 have to stay late tomorrow. So I'll just go right into it.

7 THE COURT: That's fine.

8 MR. SWICK: And we can argue later today or
9 tomorrow if we have time.

10 THE COURT: That's fine.

11 MR. SWICK: All right. We'd like to call Charles
12 Bud Robertson to the stand, Your Honor.

13 THE COURT: Okay. Now, I do see Ms. Maneen is on
14 the phone.

15 MR. SWICK: Okay. Yes, yeah. She would be the
16 next witness probably --

17 THE COURT: Okay. I also know Mr. Homony is on
18 your witness list and their witness list. I'm assuming that
19 you'll just take him when they call him?

20 MR. SWICK: I think that's right.

21 THE COURT: Okay.

22 MR. SWICK: Like, I don't really -- as long as --
23 the only concern is can you ask questions outside of the
24 scope of the declaration that we want to make him our
25 witness, but we can just do it all at once. We don't have to

1 do it twice.

2 MR. COREN: And I don't -- I don't press that
3 objection. He can go outside the scope. He's the Trustee.
4 Ask him whatever YOU want. I mean, we do the --

5 THE COURT: That was my view, too, Mr. Coren,
6 so --

7 MR. COREN: We do the declaration just to speed it
8 up, but --

9 THE COURT: Understood.

10 MR. COREN: -- you know, he can go outside, and
11 perhaps I'll have follow-up outside of it.

12 THE COURT: Understood.

13 MR. COREN: Okay.

14 MR. SWICK: All right. That's fine.

15 (Witness sworn)

16 MR. COREN: Yeah. I just wanted to ask, Your
17 Honor. Since I got papers all over the place, are we -- are
18 you All right with us examining from counsel table?

19 THE COURT: I am. Except for the -- well, I guess
20 the witness who's on the phone should be able to see you.
21 But if for some reason they can't see you --

22 MR. COREN: I'll try to move this way.

23 THE COURT: -- you may need to be --

24 MR. COREN: Yeah.

25 THE COURT: -- closer to the camera.

1 MR. COREN: Okay.

2 THE COURT: But otherwise, that's fine.

3 MR. COREN: Appreciate that. Thank you.

4 THE COURT: Mr. Swick, same thing for you. If
5 you're more comfortable at counsel table, be my guest.

6 MR. SWICK: I've been sitting all day, Your Honor.
7 I'll stand.

8 THE COURT: Understood. All right.

9 THE CLERK: Name.

10 THE WITNESS: Charles M. Robertson,
11 R-O-B-E-R-T-S-O-N. 10 Via Visione, Unit 201, Henderson,
12 Nevada 89011.

13 THE CLERK: Thank you.

14 THE COURT: Good afternoon, Mr. Robertson.

15 THE WITNESS: Good afternoon.

16 DIRECT EXAMINATION

17 BY MR. SWICK:

18 Q Good afternoon, Mr. Robertson. I just want to clear it
19 up right now because I'm trying to refer to you as Bud at
20 some point. Could you give your full name and your nickname?

21 A My legal name is Charles M. Robertson. I go by the
22 nickname Bud. I have professionally for all my adult life.

23 Q All right. What is your current occupation?

24 A I'm VP of operations for Visual Semiconductor, Inc.

25 Q All right. What did you do before working for -- we'll

1 short it -- Visual Semiconductor, I'll shorten it to VSI.

2 What did you do before working for VSI?

3 A I worked with Stream TV Networks since its founding in,
4 2009.

5 Q All right. Now before that, just give a very brief
6 overview of your, you know, employment, occupational history.

7 A Out of college I went to work into the film and
8 television industry. I worked as a producer for about 25
9 years doing a variety of tasks in the film production arena.

10 Q Like writing, producing, assistant directing?

11 A A lot of assistant directing, some writing, producing,
12 coordinating, editing. Yeah.

13 Q All right. When did you meet Mr. Mathu Rajan?

14 A I met Mr. Rajan in 2008 through a mutual friend for a
15 special project that dovetailed into the entertainment
16 industry.

17 Q Okay. Could you go into a little bit more detail
18 about, you know, starting to work with Mr. Rajan and Stream
19 and how that came about?

20 A Yes, I was introduced to Mr. Rajan in May of 2008. We
21 worked on a special project where he was exploring the
22 potential to get into film distribution in certain global
23 ethnic markets. And that's a project that we pursued for
24 most of 2008.

25 And then he made it pretty clear he wanted to go into

1 technology sector that had certain barriers to entry, as
2 opposed to just content creation where everybody's making
3 movies and there's not a lot of barriers to entry. So he
4 formed Stream TV, and I joined him at the founding of Stream
5 TV in 2009.

6 Q All right. Well, I don't think we actually talked
7 about it yet today. Could you just talk about what Stream TV
8 is and what it did?

9 A Stream was founded to develop an advanced imaging
10 technology. Mathu had this crazy idea that maybe we could do
11 3D but without glasses. And there must be somebody working
12 on that technology somewhere in the world. So we began this
13 global search to see what technologies were out there versus
14 growing something homegrown. Could we license something?

15 We came across the Philips Technology, which was very,
16 very nascent at that time in 2009. But Mathu saw that with
17 the right amount of development effort, that that could
18 actually be a good path to a product that the world would
19 accept.

20 So we spent the better part of a decade really working
21 on that technology and part of the reason it took so long as
22 we had to wait for the rest of the industry to catch up and
23 providing panels that were sufficient quality that the 3D
24 would work. So this was -- you know, HD was pretty brand new
25 at that point, and it wasn't really until 4K came around that

1 we got to a place where we felt that the technology could
2 work.

3 So I was largely doing business development at that
4 point, showing prototype units to Hollywood content creators,
5 up to Amazon, device makers. We were really trying to build
6 a whole global ecosystem that included the content creation,
7 the manufacturing and the distribution.

8 Q All right. So did Stream actually make TVs that were
9 3D?

10 A We did. I wouldn't call them TVs. They were TV size.
11 They were monitors. So a TV has a tuner that you can pull in
12 some outside programming. This was a closed system. But it
13 was a 65-inch display. It's the size of a television.

14 And we produced several thousand of those units and
15 sold them to digital signage companies, mostly in the
16 commercial space. These weren't items that people bought for
17 their homes, but there were lots of business applications for
18 them. And we had customers in Asia that bought hundreds, if
19 not thousands and other customers and one in the U.S. that
20 bought several hundred. So, you know, there are several
21 thousand of those units that are out in the world.

22 Q All right. Well, it sounds like things are pretty
23 promising for a while. So let's -- short -- little bit of a
24 short time frame here. So I want to go -- let's talk about
25 the -- so blowing -- going and making TVs. And then we -- I

1 know there's litigation before the bankruptcy. So let's
2 talk -- let's go through that phase, and we'll go from
3 litigation to the bankruptcy.

4 A Okay. Actually, 2020 was a really good year and a
5 horrible year for Stream. We had been working with a company
6 called Bosch (phonetic) in Germany. They're a supplier of
7 automotive components. I personally negotiated a \$3 mill
8 development deal with Bosch to create an instrument cluster.
9 So your speedometer and your tachometer and all that would be
10 digital in glasses free 3D. So we secured that contract in
11 March of 2020.

12 At the same time, we've been working with Google on a
13 project. Google wanted to create a video teleconferencing
14 solution that they could use for people who wanted to do, you
15 know, basically 3D Skype, right, that you could use for
16 business and personal. And so we spent the better part of --
17 well, the back half of 2019 and a good chunk of 2020, working
18 on that, and I was involved in the weekly meetings with the
19 Google engineers and the Stream engineers on that.

20 And oddly enough, the same day -- and I remember
21 because it's St. Patrick's Day. The same day we signed the
22 Bosch contract is when Google sent an email saying, okay, if
23 this prototype that you're delivering pans out, we'd like to
24 take 10,000 units in 2021, and that would have been about a
25 \$20 million deal at \$2,000 apiece.

1 MR. COREN: Yeah, I don't whether the mic's --

2 MR. SWICK: It's not coming through the mic.

3 MR. COREN: I'm not hearing anything through the
4 mic.

5 THE COURT: You want to pull it closer?

6 MR. SWICK: Sure.

7 MR. COREN: Sorry about that.

8 MR. SWICK: That's fine.

9 THE COURT: Is it coming through? Okay. We can
10 hear it.

11 MR. SWICK: He can come through, that's for sure.

12 THE COURT: Yep.

13 MR. SWICK: Okay. Yeah, yeah. Okay.

14 THE COURT: So just try and speak into the
15 microphone as best you can.

16 MR. SWICK: Will do, Your Honor.

17 THE COURT: I have -- I've been told I have a
18 booming voice, so it's easier for me to just yell into the
19 microphone.

20 MR. SWICK: I prefer to yell (inaudible).

21 THE COURT: My voice doesn't boom so much anymore,
22 so --

23 MR. SWICK: Yeah, let me restate the question.

24 BY MR. SWICK:

25 Q So you talked about a secured Creditor, 2020 pandemic.

1 We'll talk about the secured Creditor, who it was, how much
2 the secured loan was for, and then what happened in 2020.

3 A So in the early days of Stream, we took investment in
4 the form of debt from two key Creditors. One was SLS
5 Holdings run by Shad Stastney who put in about \$6 million,
6 and then another group Hawk Investment Holdings Limited out
7 of the UK, Jersey Island.

8 And Hawk put in about 39 million over 18 notes from
9 2012-ish until 2019, I think. So between the two there was
10 about \$45 million in secured debt, and SLS was the senior
11 lender and Hawk was junior in that position.

12 Q All right. I'll have more questions on this. I'm just
13 going to call all of those parties, like, the Hawk parties.
14 And including that, too, I think it's fair to say we'll call
15 SeeCubic Delaware when we get to it as part of the Hawk
16 parties, as well.

17 Okay. So the Hawk parties have a big, secured loan,
18 45-ish million bucks. What did they do in 2020 that you
19 referenced earlier?

20 A Well, before 2020, in 2018 -- if I can add, in 2018,
21 Stream was finding it difficult to bring in new investment
22 because there was this heavy debt sitting there. So Stream
23 negotiated with both of the secured lenders to execute
24 conversion agreements where Stream raised capital that
25 equaled the capital that they had put in that they would be

1 converted on a dollar for dollar basis, with the terms that
2 the new investors were putting in.

3 So they signed equity -- or debt to equity conversion
4 agreements in January of 2018, and that's what allowed Stream
5 to sort of break that log jam and start to bring in capital
6 in 2018 and 2019 as we were preparing to go to market.

7 Q All right. There should be a witness binder over there
8 for you. Can you grab that?

9 A Thank you.

10 Q All right. Let's please turn to Exhibit No. 37.

11 A Which one?

12 Q 37. Sorry.

13 A There another binder? This only goes through T-25.

14 Q Do you have Visual Semiconductor's binder?

15 A No. This is the Trustee's binder.

16 MR. SWICK: Well, I don't want to put his on.

17 I'll put mine on.

18 MR. COREN: Well, speed things up.

19 THE WITNESS: This is the Trustee's exhibit, also.

20 MR. SWICK: All right. Here you go.

21 THE COURT: Let's put it this way. I know I
22 have -- I know I have a set, but -- yeah, that's --

23 THE WITNESS: Okay. I'm sorry. Did you say 37?

24 MR. SWICK: 37.

25 THE WITNESS: Okay. I'm there.

1 BY MR. SWICK:

2 Q All right. Do you recognize this document?

3 A I do.

4 Q What is it?

5 A This is the conversion agreement that was signed by
6 Hawk Investment Holdings. I'll just call them Hawk.

7 Q Okay. So you've looked at this before? You're
8 familiar with it?

9 A Very familiar, yes.

10 Q Is it a true and accurate copy of it?

11 A It appears to be, other than the court stamp at the top
12 and the exhibit stamp at the bottom.

13 Q All right. Good. All right. Now, let's turn to
14 Exhibit 38.

15 A Okay.

16 Q All right. What is this document?

17 A This is the amendment to the Hawk conversion agreement
18 that was executed a little over a year later.

19 Q And why -- why was it amended?

20 A The initial conversion agreement in January of 2018
21 accommodated or considered that there would be -- oh, I
22 apologize that's my phone in my backpack, which I forgot to
23 turn the ringer off at lunch.

24 Q Beautiful ring.

25 THE WITNESS: Just hit the slide button, John.

1 And if you hand it to me, I'll turn the ringer off so that we
2 don't have that happen again. I apologize.

3 THE COURT: And give your phone back to Mr.
4 Thompson --

5 THE WITNESS: Yes.

6 THE COURT: -- of course.

7 THE WITNESS: Thanks.

8 BY MR. SWICK:

9 Q Okay. So just I'm going to restate that question right
10 there. Why -- why -- so it's amending the last agreement.
11 So conversion agreement, amending last conversion, but why
12 was the original conversion agreement being amended?

13 A So the agreement of January 2018 accommodated ten notes
14 from Hawk. Hawk, as I said, did 18 loans over the course of
15 many years. And at the time of the conversion agreement in
16 2018, there were only 10 loans that have been made, and it
17 reflects notes 1 through 10.

18 By the time we got a year later into April of 2019,
19 there were two more loans that had been made with the
20 likelihood that there would be some additional ones.

21 So an amendment was agreed to that Notes 11 and 12 are
22 also convertible now, and any future funding that Hawk
23 provides, those will also be convertible. So that we wanted
24 to address the known additions plus allow for runway that
25 there would probably be some additional funding.

1 Q Okay. And so these two, these are to fully convert
2 Hawk. And then to explain how the conversion would work, how
3 could they get converted under these conversion agreements?

4 A So it's pretty simple. It's based on the ACR, which is
5 the actual cash received. So there might be, let's say, a \$5
6 million note. They're mostly in pounds, but let's use
7 dollars. So there's a \$5 million note and Hawk would say,
8 I'm going to take some prepaid interest. So although the
9 face value of the note is 5 million, I'm only going to give
10 you 4.5 million. I'm taking half a million in interest
11 upfront. Your ACR, the cash you received, is 4.5 million.

12 So this agreement said, we're only going to look at the
13 actual cash you receive, not the face value of the note. And
14 when you raise 4.5 million from some other source, you can
15 convert the Hawk 4.5 million to equity, and the equity will
16 get will be a match for whatever the new money got. So if
17 you raise 4.5 million, and you gave them that for a dollar a
18 share where they got -- they invested 4 and a half million,
19 and they got 4 and a half million shares, you give Hawk 4 and
20 a half million shares, too, and their debt is gone.

21 So it was going to be a dollar for dollar based on
22 whatever the new money was coming in.

23 Q Okay. So the amount of money that Stream actually
24 received, that's the number. And then other -- if other
25 money equaled that in equity, then Hawks would be converted

1 from a secured loan into equity; is that right?

2 A Correct. And that conversion would be at Stream's sole
3 discretion. Stream would, at some point, notify Hawk we've
4 raised new money, and the new money was raised under these
5 terms. And here's a notice that you've been converted.

6 And then according to the agreement, my understanding
7 anyway, is that Hawk might be able to argue about how much
8 equity they should receive and exactly what were the terms.
9 There might be a little bit of haggling on what the equity
10 distribution was. But the extinguishment of the debt, that
11 happens on notice from Stream that it had -- had brought in
12 new investment.

13 MR. SWICK: Okay. And so, Your Honor, I looked at
14 your procedures, and you said you want to get -- admit
15 exhibits at the end. I don't think we're going to have a lot
16 of exhibit issues. But happy to -- I'd like to get these
17 admitted. We could do it at the end, but I'm a little bit
18 worried that, for example, witness steps down, and there's --
19 I messed something up on the direct and didn't lay a proper
20 foundation. There's an objection, and my -- now my witness
21 is not here anymore.

22 What is the best way to do to -- to go through and
23 admit these exhibits, I guess?

24 MR. COREN: I think I can solve that problem
25 having gotten them in advance, looked at them, and told

1 counsel there was only one I had a question with, and we
2 haven't addressed that one. So at the end of their
3 presentation, they want to offer all in to evidence, I'll
4 have no objection with the exception of that one, which we
5 can talk about.

6 THE COURT: Do you want to tell me what one that
7 is?

8 MR. COREN: I don't remember the number, but it
9 was a supplemental declaration from Suby Joseph filed in
10 connection with the reply brief.

11 THE COURT: Okay.

12 MR. COREN: It is -- what number? 32.

13 THE COURT: Okay.

14 MR. COREN: Other than that, we'll have no
15 objection.

16 THE COURT: Okay. All right. Does that satisfy
17 you, Counsel? Satisfy you --

18 MR. SWICK: That's great. That's super easy.

19 THE COURT: All right. I appreciate that the
20 parties have had the opportunity to talk. I also -- and I'll
21 just say this. I appreciate that you all went through and
22 did a joint exhibit on the Court's form. It's actually
23 extremely helpful. So thank you both in doing that.
24 I appreciate it.

25 BY MR. SWICK:

1 Q Okay. So we actually went down a little bit of a
2 rabbit hole there. I said, what did the Hawk parties do in
3 2020 -- the Hawk parties, and you referred back to the 2018
4 conversion and all that.

5 So let's go back to 2020. What did these Hawk parties
6 do that was not good for Stream and that you were talking
7 about?

8 A Well, initially, SLS said that it was -- it was not
9 going to honor the conversion agreement, and it wanted to
10 call in the note. And we at Stream didn't have the \$6
11 million to repay the note plus the interest, which
12 probably -- I don't know at that time was, you know, at least
13 7 or 8 million total.

14 And Mr. Stastney, who was the head of SLS and the
15 senior secured lender, who was also at that time, the CFO of
16 Stream and the vice chairman of Stream's board of directors,
17 he resigned from Stream, and he filed a foreclosure action in
18 Superior Court in March of 2020

19 Q Okay. Let's talk about that. The foreclosure action,
20 how did -- how did this play out?

21 A Stream filed its objection, of course, citing the
22 conversion agreement. And the judge there said that based on
23 the docket calendar schedule, that it was not likely to be
24 heard until 14 months later, so June of 2021 was likely when
25 the hearing would start.

1 Q Okay. Now I'm getting a little confused. Wasn't there
2 an omnibus agreement that's been mentioned hundreds of times
3 in these cases? Is that part of what you're talking about,
4 or is that different?

5 A Well, that -- well, that's the next step.

6 Q Okay.

7 A. So in March of 2020, the foreclosure -- foreclosure
8 action was filed. Mr. Stastney had been telling a variety of
9 people at Stream TV, you know, the assets are now mine. I
10 have foreclosed; they're mine.

11 And I had a variety of colleagues telling me, I guess,
12 Shad's our new boss now. And I said, no, I don't think
13 anything's been adjudicated. It's only been -- it's only
14 been filed. And so there was a lot of pressure, I think, on
15 Mr. Stastney to get the assets that he wanted to get.
16 And we had pressure from Hawk Investments that we should
17 expand the board of directors, that their feeling was that
18 Mathu Rajan had too much control over Stream TV, and
19 convinced Mathu to expand the board of directors.

20 We expanded the board by three seats. And, no, I'm
21 sorry, four seats. There were four directors that were added
22 expanding the board to five. I'm sorry. I'm going to back
23 up. It is three seats, expanding the board to five because
24 we had two -- two directors already.

25 Q Okay. How does that relate to the omnibus agreement?

1 Get us where we're going.

2 A So the new Board members were appointed, and in a May
3 4th, 2020, board meeting, the three new members of the board
4 said, you know, what we really need to do is, we can't afford
5 this -- this litigation that's coming our way. We really
6 should settle with the Creditors. Let's form a resolution
7 committee. And we nominate ourselves.

8 So these two new guys, they're going to be the
9 committee, all opposed. And Mathu and the current director
10 said, well, hang on, we've just started this and already
11 you're talking about settling. We should talk about this.
12 And they said, too bad, so sad, we outvote you three to two.
13 We're forming the committee.

14 And so they formed themselves as a committee, and then
15 two days later they handed in a signed omnibus agreement that
16 was -- I don't know -- 30-40 pages that basically said,
17 because there's debt and you don't know how to pay the debt,
18 we're just going to give all the assets to the secured
19 lenders, and that's going to settle it.

20 Q Okay. So trying to shortcut a little bit. These three
21 new directors, I think it's safe to say that they were Hawk
22 party related directors, not Mathu Rajan camp directors?

23 A Well, there was quite a bit of litigation and
24 discussion about the level of independence of these new
25 directors, but we -- we know for sure that Kevin Golub

1 (phonetic) admitted on the record and otherwise that he was
2 representative of Hawk, and he was happy to represent Hawk on
3 the board.

4 Q Okay.

5 A So we know that for sure at least one of them was there
6 specifically as his representative.

7 Q All right. So we get the omnibus agreement. What
8 happens next?

9 A So the omnibus agreement is signed May 6th. The
10 agreement basically says, we're going to form a new company,
11 and this new company is going to take possession of all of
12 Stream's assets. That was May. In June, SeeCubic, Inc. was
13 formed and SeeCubic, Inc. was that new company that was going
14 to take all the assets. And it began seizing assets wherever
15 it could get its hands on those assets.

16 We immediately challenged the validity of the board
17 resolution and the ability of the board to transfer all the
18 company's assets because Stream's charter had a specific
19 provision in it that said that in order for there to be a
20 transfer of all or substantially all of the company's assets,
21 a vote of the Class B voting shareholders would be required
22 to approve it.

23 And they said, in this case, because the company is
24 essentially insolvent, we don't think the charter counts.
25 You don't need that vote. We're taking the things anyway.

1 Q So there was not a vote by the Class B shareholders to
2 approve?

3 A There was never one called --

4 Q Okay.

5 A -- and never one taken and never one approved, correct.

6 Q All right. So I think you just said you did file
7 something in court and challenged it. Could you -- let's get
8 through that, if we can?

9 A Yeah, it became clear by August that they were -- that
10 SeeCubic Inc, now that it was up and operating but operated
11 by the secured lenders, Hawk and SLS and Mr. Stastney, they
12 were making a move to take Streams bonding equipment in
13 China. And we had been copied with a power of attorney
14 letter. They were trying to empower someone in China to
15 operate on their behalf.

16 So Stream filed a motion, filed a complaint in the
17 Chancery Court of Delaware, seeking injunctive relief and
18 basically blocking them from taking the assets and SeeCubic
19 counterclaimed seeking injunctive relief against Stream that
20 Stream would not challenge the omnibus agreement.

21 Q What was the result of those waring pleadings right
22 there?

23 A It was very -- what's the word? Not contracted, but
24 expansive litigation. So there were really three steps. The
25 first one was -- well, right at the start, Vice Chancellor

1 Laster said, well, there's a certain equity component here at
2 Stream. You're not allowed to raise any more money into your
3 bank account. You have what you have; make do with that.
4 That was in September of 2020.

5 There was a couple of months of briefing and discovery.
6 In December of 2020, Vice Chancellor Laster issued a
7 preliminary injunction order, and he said, based on the way
8 things are going, I think it's likely I'm going to find in
9 favor of SeeCubic, Inc. So Stream TV, you're no longer
10 allowed to challenge the omnibus agreement outside of this
11 courtroom. This is where you talk about it. You have to
12 surrender all your -- you have to surrender your assets
13 pursuant to the agreement. And if the -- if I find later
14 that the agreement is not valid, then you'll get your stuff
15 back.

16 So on December 8th of 2020, Stream had to surrender its
17 bank accounts, its trademarks, its physical assets, its IP,
18 its stock shares over its international subsidiaries,
19 everything had to go, and Stream was left with nothing but
20 about \$16 million in trade debt, which was not being assumed
21 in the omnibus agreement.

22 Q Okay. So I'm going to try to jumpstart this a little
23 bit. So there was an appeal --

24 MR. SWICK: I'm going to be a little bit leading
25 here, Your Honor, just to kind of go quicker.

1 BY MR. SWICK:

2 Q There was an appeal of that order, and you
3 eventually -- the Delaware -- just give the gist of what the
4 Delaware Supreme Court did in regards to that appeal.

5 A Sure. A summary judgment was issued the following
6 November. So it took another 11 months before we got from
7 the preliminary to the summary judgment. Stream appealed to
8 the Delaware Supreme Court in December of 2021. There was
9 oral argument in April.

10 And in June, the Delaware Supreme Court ruled that
11 Stream's charter had been violated and that the omnibus
12 agreement was void ab initio, and it was reversed and
13 remanded to the Vice Chancellor to unwind what he had done 18
14 months earlier.

15 Q Got you. So for -- it's reversed, but the underlying
16 order was voided, right?

17 A Yes, correct.

18 Q Okay.

19 A Vacated, yeah.

20 Q Now, it's been 18 months. Stream, Mathu Rajan, they
21 have not had control of Stream's assets, and Stream was not
22 operating, right?

23 A Well --

24 Q They weren't making TVs.

25 A Yeah. Correct. Stream had no technology with which to

1 operate. It was operating in terms of pursuing its legal
2 recourses and it was maintaining minimal staff, who had the
3 institutional knowledge of people that did not go with the
4 technology that stayed at Stream. But Stream wasn't allowed
5 to use its own name or have a bank account, so.

6 Q Okay. The Delaware Supreme Court then says, all right,
7 give the stuff back. Let Stream work again. All right.
8 Just -- did the stuff get given back? What happened after
9 that?

10 A Very little came back. The primary argument from
11 SeeCubic, Inc. was, well, hey, we've had the things for a
12 year and a half; you know, we've improved them and why -- we
13 shouldn't have to give back something that is better than it
14 was when we got it. And that argument went on for months.

15 Vice Chancellor Laster ultimately said, you know what,
16 you're arguing that it's not that you can't give them back,
17 it's that you don't want to because they've been improved.
18 You're entitled to unjust enrichment if you can prove that,
19 in fact, Stream was unjustly enriched, but you need to give
20 the stuff back.

21 Q Were -- was -- were the Hawk parties ever found a
22 contempt of court for not giving the stuff back after the
23 Delaware Supreme Court case?

24 A They were. I believe it was early October, beginning
25 of October 2022. And how that came about was that finally

1 Vice Chancellor Laster said, you know, it occurs to me you're
2 arguing how hard it is to separate the assets and you don't
3 want to give the stuff back, but it looks like a big part of
4 what Stream owns are its international subsidiaries.

5 And they took possession by transferring the stock of
6 Technovative -- a thousand shares of Technovative. You can
7 just send the shares back and then Stream at least has all of
8 its international subsidiaries. That's easy. Do that.
9 Let's start there.

10 And what happened was Hawk and SLS and Shad Stastney as
11 the Head of SeeCubic, Inc., they orchestrated a transfer
12 where they transferred the shares back to Stream, but at the
13 same breath, Hawk issued a proxy rights notice saying, oh, by
14 the way, I have proxy rights to both those shares because I'm
15 a secured lender, and I want to put SeeCubic back in charge.

16 So it was this 360 where we gave it back but instantly
17 yanked it back, and Vice Chancellor Laster said that's not
18 what I meant. I said that Stream had the right to have its
19 assets to have a chance to pay you back, and if you don't get
20 your assets back, then how can you pay them back? So they
21 were held in contempt.

22 MR. COREN: If I may just lodge an objection. I
23 haven't objected because I view this by way of background,
24 but this witness really is not competent to testify as to
25 what or why courts did what they did.

1 There are decisions which describe all this. If
2 they wanted to put that into evidence, this witness is
3 nothing but hearsay and his opinion. But so far, I viewed it
4 as background, but I think to the extent we're going to do
5 more of that, it's not appropriate.

6 MR. SWICK: It's absolutely foundational and
7 relevant to this administrative claim what they were doing
8 that were -- the administrative claim we're talking about.
9 And he's -- I actually don't need opinions as to why judges
10 did it. The judges do what they did. We're doing that as
11 far as background, and we can send a list of docket numbers
12 from the state courts, if Your Honor would like, but that
13 sounds like an awful way to spend time.

14 But we can -- we're happy to plow through this.
15 And we're actually almost right to the bankruptcy, and then
16 we're not talking about other court's orders.

17 But Your Honor, okay, I can just ask for his
18 understanding of it. I don't need his opinion of it, and I
19 think the Court can sift that out.

20 MR. COREN: There's an easier way. I hate to
21 help. But there's an easier way, and that's just based on
22 whatever happened in the Court, what did you do? And we
23 don't need to decide what the Court did and why.

24 THE COURT: I think that's what Mr. Swick just
25 said. He'll -- he'll just rephrase it to what's his

1 understanding.

2 MR. SWICK: Yeah.

3 THE COURT: Okay.

4 BY MR. SWICK:

5 Q All right. I forgot where we were. Do you remember
6 where we were?

7 A Contempt of court.

8 Q Okay. So there was a -- there was a contempt of court
9 order. All right. Long story short, I know Stream
10 eventually filed for bankruptcy. We'll talk about that.

11 But between this, I know there were some de minimis
12 assets that were returned, but there were definitely some
13 things that were never returned prior to or during the
14 bankruptcy. What were those main things?

15 A I would say the biggest thing is a multimillion-dollar
16 optical bonding machine that was titled in Stream. Stream
17 bought that machine, paid for it, deployed it in Asia for the
18 production of those several thousand displays that we
19 mentioned earlier.

20 And then Stream had disassembled that machine to move
21 it into another facility because the equipment manager or
22 equipment manufacturer that we were using was too expensive.

23 Q Right.

24 A And that equipment was in storage ready to be moved
25 and -- and deployed somewhere.

1 Q All right. So on that bonding machine before we go to
2 the other things, was that pretty important for Stream to
3 operate that bonding machine?

4 A It was very important, yeah. That was the
5 multimillion-dollar machine that bonds a lens onto a normal
6 2D panel, and that's what gives the 3D effect. Was it the
7 only way for stream to go to market? No, there are other
8 ways that you can do the bonding, but that investment had
9 been made, that equipment had been tested. And it was the
10 easy path toward production.

11 Q All right. Were there any -- what else was never
12 returned to Stream that was -- and without going to every,
13 like, little trinket or whatever, just the main things that
14 were necessary for Stream to operate?

15 A All of the demonstrator units for phones and tablets
16 and PC monitors and laptops, there were a variety of
17 different products that had samples that were surrendered to
18 SeeCubic, Inc. and never returned because they were
19 "improved" and withheld.

20 Q Okay. So you've been -- let's say you get -- you get
21 the -- you have a court ruling from the Delaware Superior
22 Court they should get the stuff. They don't get it. And I
23 know there was a bankruptcy. So what led to the bankruptcy?

24 A The primary issue for Stream was that nobody was going
25 to invest in a company that didn't have its assets back. The

1 court ruled -- the Supreme Court ruled in June of 2022,
2 you're right, the assets should never have been taken. And
3 we had -- we've been working to secure investments so that we
4 could get back into business.

5 The pandemic is mostly over by that point. We have
6 customers that have been waiting patiently for the ability to
7 order products again, but they can see -- everybody is
8 looking -- that we don't have our assets back yet and the
9 litigation is continuing. So Stream is pretty much
10 uninvestable.

11 And after nine months of trying to get its assets back,
12 Stream filed for Chapter 11 protection in the hopes that
13 maybe a turnover action would finally get the assets back in,
14 so the company could get back up and running and give it a
15 chance to reorganize with some protection from the secured
16 Creditors and a chance to really take a look at the
17 conversion of the Hawk debt, which was the most significant
18 thing on the books because after the Supreme Court decision,
19 we did an accounting of all the money that had been raised
20 from January 2018 to date and we determined that Hawk was
21 converted, and Stream issued conversion notices to Hawk
22 saying you are no longer debt; your equity. And here's why
23 and how, and Hawk was challenging that.

24 Q Okay. A little bit to unpack here. So was it just
25 Stream that infused equity, or who infused the equity into

1 Stream that, one, gives money through equity and then, two,
2 converted the Hawk notes down?

3 A Well, we're talking about an extended period. So
4 the --

5 Q Rough picture. I don't need --

6 A Yes. I would -- there's many, many investors who put
7 money directly into Stream in 2018, 2019, some in 2020. That
8 was a tough year, as I said.

9 And then subsequent to that, Mathu Rajan had formed
10 another company because we weren't allowed to do business
11 under the Stream name during that injunction period. And so
12 Mathu Rajan kept the Stream team together, and through a
13 stock purchase agreement similar to what VSI has, this other
14 company, Visual Technology Innovations, kept the Stream team
15 together and acquired equity in Stream and made payments for
16 the Stream staff and other expenses on Stream's behalf.

17 Q Okay. So I was worried -- sorry. I got little
18 placeholders here in my own brain. So Stream/VSI -- or
19 Stream's opinion prior to the bankruptcy was that Hawk had
20 been fully converted to equity?

21 A Correct. Based on money it took indirectly.

22 Q They weren't (inaudible) yet. Okay. Now we got my
23 client, Visual Semiconductor. Where did this thing come
24 from? Why was it formed?

25 A Well, VSI was formed in April of 2022, right about the

1 time that the Delaware Supreme Court oral argument was taking
2 place. And Stream felt very confident that it was going to
3 prevail and that it would finally get its assets back. And
4 VSI was formed as an entity primarily to support Stream
5 through the process of getting back into business.

6 And one of the things -- knowing that Hawk was close to
7 being converted, we wanted to have VSI as an investor in the
8 Stream to really make sure there was a surplus of investment
9 for the Hawk conversion.

10 Q So VSI is formed really to go find money and put it
11 into Stream to fully convert Hawk. That's the primary
12 purpose the VSI was formed.

13 A Yes, I'd say that's one of the primary purposes. The
14 other purpose was that for Stream to be able to execute on
15 its purchase orders, it was going to need some financial
16 assistance, supply chain financing and other things that it
17 was unlikely to be able to get on its own, given its
18 five-year history of litigation and other such things,
19 whereas VSI as a new entity could support Stream in its
20 effort to get to market.

21 Q But VSI was never going to try to make a bunch of money
22 on this stuff. It was really just basically taking in cost
23 and just working to give Stream a way to operate if it got
24 its assets back.

25 MR. COREN: Objection. Leading.

1 THE COURT: Sustained. I mean, I think you can --

2 MR. SWICK: I got it, yeah.

3 THE COURT: -- you can re-ask.

4 MR. SWICK: Yeah.

5 BY MR. SWICK:

6 Q All right. So was VSI ever profitable on its own
7 right?

8 A No, it was not.

9 Q Okay. And would you say that it could have maybe been
10 profitable -- Actually, that will be leading to you. Let's
11 just -- we're fine.

12 All right. So besides the -- I guess you're -- I think
13 you're referring to like a distributor agreement that was --
14 actually, let's go back to this. Was anything ever done
15 under this arrangement to do the purchase financing, any of
16 that? Did VSI ever, like, do one of those contracts?

17 A There is a distribution agreement that was entered into
18 at the March 2023, just after the petition date for the
19 bankruptcy. The discussion had started on that arrangement
20 earlier -- I would say probably in January -- but the
21 agreement wasn't actually signed until the March.

22 But the idea with that agreement is that VSI would go
23 out and basically backstop Stream with its customers on
24 getting production done, and it would take a 10 percent fee
25 for doing that.

1 Q Okay. Was that a very profitable arrangement for VSI
2 to do that?

3 A It never got to that point. It wasn't going to be a
4 huge profit center because it was -- you know, we were going
5 to -- VSI would largely recover its costs for doing all that
6 support work and, yeah, there was some margin in there. But
7 because of the litigation chaos and the bankruptcy, no
8 production was ever able to restart. The bonding machine
9 still sits, I assume, in a warehouse somewhere.

10 Q Yeah, so no money was exchanged. VSI did not make any
11 money on this distributor agreement or this arrangement
12 because it never happened.

13 A No. Correct.

14 Q Okay. Anything else that VSI did purpose-wise -- and
15 really, through the bankruptcy, like, did it do anything
16 else? Has it done anything else?

17 A Well, one of the biggest things that it did was in July
18 of 2023, Stream was nearing the end of its period of
19 exclusivity to propose a plan over the organization, and VSI
20 offered to sponsor that plan. So that plan was filed on July
21 13th in this court with VSI willing to put up \$35 million in
22 funding for a plan that would include primarily pursuit of
23 debt to equity conversion of the secured Creditors and then
24 reasonable return to all of the unsecured Creditors.

25 Q Okay. The thought process there was -- well, so, yeah,

1 I guess the understanding for Stream was that Hawk would have
2 been fully converted and that \$35 million would go and that
3 be some return for unsecured Creditors. That's leading, I
4 know, but I'm trying to go a little bit quicker.

5 Okay. All right. That plan never happened, right?

6 A No. Correct.

7 Q Okay. So I'll -- the -- there's still litigation
8 continued in the bankruptcy?

9 A Oh, yes.

10 Q Okay. So if earlier -- Mr. Victor had talked earlier
11 today, he testified several times that Stream never made
12 anything, it never did anything, it was not -- totally not
13 operational. Why was Stream when -- when -- Mr. Victor came
14 in way later, look at -- kind of step through that, but why
15 was Stream not able to make TVs or do anything during the
16 bankruptcy and right before it?

17 A Well, one of the primary reasons is we never got that
18 bonding machine back. So that would have made it
19 significantly easier to go into production as opposed to
20 having to bring in third-party vendors to do it. The
21 purchase orders that were secured by VSI for the benefit of
22 Stream and then back-to-back purchase orders that were given
23 to Stream -- so Stream had 138 million in purchase orders by
24 the April, a month in -- less than a month into the
25 bankruptcy.

1 The validity of those purchase orders was challenged by
2 the Hawk parties who were saying that Stream was just making
3 up customers and that there was no market for it and that no
4 way for Stream to fulfill those orders. And that's what VSI
5 was attempting to do with backstop Stream so that it could
6 fulfill those orders.

7 Q Okay. Were you involved in getting those purchase
8 orders?

9 A I was not personally involved in obtaining them, but I
10 was aware of them. I saw them come through as they were
11 obtained.

12 Q Did you ever talk to any people and counterparties to
13 those purchase orders?

14 A I -- no, I spoke to the salesman who secured them, but
15 I did not speak to the customers myself.

16 Q What's your understanding -- what's your understanding
17 what's your understanding about the validity of those
18 purchase orders?

19 MR. COREN: Objection. His opinion or
20 understanding about the validity of purchase orders that he
21 was not involved in or didn't speak to anyone is irrelevant,
22 and the Court may recall that this Court has already
23 addressed those purchase orders, and I believe found them to
24 be illusory and a sham.

25 THE COURT: I'll let him answer.

1 THE WITNESS: Well, my understanding on the
2 smaller of the two purchase orders, I believe it to be very
3 valid because the order was placed by Stream's biggest
4 customer of those several thousand units that were ordered
5 before. So this was a customer who had already bought more
6 than a thousand, maybe as many as 2,000 units over in Asia,
7 and had been hounding us for a long time when can I get more?

8 And then when he saw that we won in the Supreme
9 Court, then the discussions picked up again. And by the time
10 early in the bankruptcy, he said, great, I would like to give
11 you an order. Can you take an order now? And we said, Yes,
12 we can.

13 So I can absolutely speak to that one purchase
14 order because I dealt with the CEO of that company. I was
15 directly involved in issuing him the content licenses that
16 allowed him to make content for the screens that he had
17 previously purchased. I spoke on a regular basis with the
18 salesman who said when are we going to be able to get him
19 more product; he's running out.

20 So I can speak without a doubt that that is a real
21 purchase order from a real customer who has a strong desire
22 to buy product.

23 BY MR. SWICK:

24 Q So they'd actually paid Stream before for these --

25 A Oh, yes.

1 Q Okay. What's the name of that entity?

2 A Marvel Digital was the name of the company. He was
3 operating under a new company now called SyStar (phonetic)
4 Limited.

5 Q It's not Marvel like Wolverine Marvel?

6 A No, no, no.

7 Q Okay. So different Marvel. Okay. Okay. So we're --
8 let's -- bankruptcy has been filed. All right. Just 10,000
9 foot overview. What's going on between when the bankruptcy
10 is filed and then to about the time that Mr. Homony is
11 appointed? So he's appointed, I think, in January of 2024.
12 So just give us your overview of that period.

13 A Yeah, I would say the biggest thing that happened in
14 that window -- and this really goes back to you asked me why
15 didn't Stream get into production. From the time that the
16 litigation in the Chancery Court was put on hold by the
17 bankruptcy, SeeCubic Inc. was really aggressive in their
18 actions to make sure that we did not regain operational
19 control of the Dutch subsidiary where the R&D work is done,
20 where the optical lenses are designed, where the rendering
21 code is developed.

22 So we did have a product engineering team in Silicon
23 Valley, but the heart of the engineering was in The
24 Netherlands. And as soon as the bankruptcy started, SeeCubic
25 Inc. made a move over in The Netherlands to replace Mathu

1 Rajan as the director and install Shad Stastney as the
2 controlling Director over in The Netherlands.

3 And that -- and it resulted in the hearing in June,
4 three months into the bankruptcy. In that June hearing, they
5 succeeded in having Mathu Rajan removed and an independent
6 director put in because the -- and I was there in person at
7 that trial, so I heard it directly.

8 Q This is The Netherlands?

9 A The Netherlands. Correct. And I was there because I
10 had been the CEO of that Dutch entity, SeeCubic B.V. For two
11 years, I was the CEO, right up until the omnibus agreement,
12 arrested control away from Stream. So they succeeded in
13 having Mathu Rajan removed, an independent director was
14 appointed.

15 After less than a month, the independent director
16 realized, gee, this is way too contentious for me. He
17 resigned and another hearing took place. And in the
18 subsequent hearing, Shad Stastney was appointed the sole
19 director of the Dutch entities. And there are several of
20 them.

21 So at that point -- well, really, not at that point,
22 all year long, the Dutch team had said, we don't know who to
23 listen to. Mr. Stastney says, I'm in charge. Mr. Rajan
24 says, no, look, I'm in charge. The Delaware Supreme Court
25 said you have to listen to us. And our Dutch team, who we'd

1 worked with for ten years, said, we don't know who to
2 believe; we're not lawyers; we'll wait until a Dutch court
3 tells us what to do.

4 And so they sat on their hands for the beginning of the
5 bankruptcy, and then ultimately the Dutch court appointed Mr.
6 Stastney. And from that point in September of 2020, we had
7 no ability to direct our international subsidiaries. So even
8 if we'd gotten the bonding machine back, we didn't have other
9 parts of the package that we really needed to get to market
10 because the Hawk parties, as you call them, were interfering
11 in our ability to operate.

12 Q Okay. So just to summarize, it sounds like basically
13 from when the omnibus agreement, which -- what year was that
14 you said?

15 A That was May of 2020.

16 Q So really, Stream didn't have what -- didn't have the
17 ability to really operate starting right then and it carried
18 all the way over until the Chapter 11 Trustee was appointed
19 and through that?

20 A Yeah, I would say that's correct. The core team was
21 kept together in the hopes that eventually the legal
22 situation would align properly, and we could get back into
23 business under the Stream banner.

24 Q All right. So let's go back and talk a little bit more
25 about you. How -- who were you employed by during this time,

1 like, so 2021 up until the bankruptcy?

2 A Well, I was a -- I was a Stream W-2 employee until
3 December of 2020 when the preliminary injunction said Stream
4 can't have its own bank accounts and it can't operate under
5 its own name. So at that point, nobody was an employee of
6 Stream anymore.

7 Mathu Rajan said, you know, if you're not going with
8 the bad guys, if you want to stay here and fight the good
9 fight, which we believe that we're going to ultimately win,
10 I'll find a way to retain you for the benefit of Stream.
11 Let's -- Stream needs to keep fighting for its stuff, and you
12 have institutional knowledge.

13 So I was paid as a contract employee by a couple of
14 different entities that were controlled by Mathu Rajan over
15 those years from January of 2021 until well into 2024.

16 Q Okay. But, like, when the bankruptcy started, who were
17 you employed by?

18 A When this bankruptcy started in March -- well, my
19 employer was Stream TV.

20 Q Right. Yeah. Okay.

21 A Third parties were paying me, but -- but I was employed
22 by Stream as a contract employee to do work for the benefit
23 of Stream all the way until, you know, well into 2024.

24 Q Got you. And so Stream has no way to generate its own
25 money, right?

1 A That's correct.

2 Q Okay. And so, yes, there's third parties out there
3 that are infusing money. Did they know that part of the
4 money that they're using to pay you on behalf of Stream?

5 A Did the --

6 Q Like --

7 A Who are they when you say --

8 Q Yeah, like, Mathu Rajan, I guess, was raising money to
9 pay you. Did -- was that open and everybody know what was
10 going on?

11 A Oh, yes.

12 Q Okay. And so now and let's talk about this little
13 mechanism right here that -- well, actually, let -- let me
14 wait on that. Let's -- let's go to this. Let's -- let's
15 talk about -- okay. So Mr. Homony gets appointed January
16 2024, I think.

17 A Correct.

18 Q How did how did that start? Let's -- let's talk about
19 your -- your relationship and these other contract employees
20 of Stream. How did that work with Mr. Homony?

21 A Well, we had decided that it would be best if there was
22 a single point of contact between the Trustee, and the Stream
23 team for purposes of clarity, to make sure that the
24 communication was clear, things didn't fall through the
25 cracks, unless, of course, he wanted to direct us, you know,

1 directly and individually. Of course, we were all open to
2 that. But primarily, Nicole Maneen was that conduit for the
3 communication.

4 And we were initially a little bit concerned -- of
5 course, there's a new boss. And so what is he going to say
6 about Stream? Does he understand what we've been through,
7 what we've fought for, what we have on the line, what it can
8 be, what we've lost and how we can get it back? All of those
9 questions were our concern. And we were relieved that at the
10 start, Mr. Homony seemed to be really on board with the good
11 fight, I guess I should say, and really bringing Stream back
12 to a good resolution.

13 Q All right. Actually, I do want to put a pin in that
14 because I kind of skipped through chronological order. What
15 I want to go back to is -- I just stopped mid subject. I
16 want to go back to this funding arrangement that Stream had
17 had.

18 All right. So how -- how -- okay. Stream, obviously,
19 brought in a bunch of money to fund this case through, like,
20 through -- even after the Chapter 11 Trustee was -- how was
21 the how was Stream getting this money?

22 A Well, I would say from -- from the start of this
23 bankruptcy and actually several months beforehand, VSI was
24 funding all of Stream's expenses. It was --

25 Q Why was VSI funding Stream's expenses?

1 A Well, it was twofold. Primarily, to make sure --
2 because Stream had issued conversion notices to the Hawk
3 parties in October of 2022 and Hawk had rejected them and had
4 claimed that even, I think, one or two notes were not
5 convertible, and therefore, a few million dollars needed to
6 be raised by Stream anyway. VSI wanted to make sure that it
7 put additional investment into Stream that would more than
8 cover whatever the conversion and repayment obligations would
9 be.

10 Q Right. And so why did Stream want to convert Hawk? I
11 think it's a pretty simple question?

12 A Well, yeah, I'll -- I'll answer it. But obviously, if
13 you have, you know, 100-plus million of secured debt with the
14 interest that's owed on it, that's a huge drain on a company;
15 it's a huge drain on the estate. But if for 39 million of
16 actual cash received, you can convert \$100 million worth of
17 debt or I think at that point they were claiming -- Hawk was
18 claiming it was \$150 million with all the interest over ten
19 years. If you can take 150 million worth of debt, but by
20 raising 39 million you can convert it to equity, that's a no
21 brainer for the path forward for the company.

22 Q So you know Hawk was claiming 100 whatever. How much
23 money did Hawk actually put into Stream?

24 A Thirty-nine million was the actual cash --

25 Q Okay. Thirty-nine --

1 A -- received over --

2 Q -- million was the actual number?

3 A Correct.

4 Q Okay. And so -- gosh, I got to recap. I'm so sorry.

5 So you thought -- Stream thought Hawk was (inaudible) for

6 before the bankruptcy, but then Stream did need money in the

7 bankruptcy to function, try to get a plan. But just to make

8 sure all Hawk was converted, they had no more arguments

9 whatsoever. That's why this -- that's why VSI was investing

10 as equity at the time as opposed to a loan?

11 A Correct.

12 Q Okay. All right. So now -- so what about was the

13 amount of money that Stream/VSI thought that would certainly

14 make it to where Hawk had no arguments that it had not been

15 converted?

16 A We assume that it was probably around 5 million. We

17 weren't 100 percent sure what the argument was going to be

18 and whether certain investments that Stream had raised might

19 for some reason be discounted in some way. So we -- we had

20 set our sights on, you know, at least 5 million.

21 Q Okay. We're going to go back to this binder. Let's go

22 to Exhibit VSI 22.

23 A Okay.

24 Q What is this document?

25 A This is a stock purchase agreement where VSI is

1 acquiring roughly \$1.4 million worth of equity in Stream.

2 Q So this -- we'll do --look at Exhibit Number 26.

3 A Okay.

4 Q What is that document?

5 A 26 is another stock purchase agreement where VSI is
6 acquiring additional equity in Stream.

7 Q All right. And let's look at Exhibit Number 27. What
8 is that?

9 Like, hold on one second. I'm sorry. Hold on. Let's
10 start over here. All right. Let -- I'm sorry. Let's start
11 at Exhibit 22.

12 You got it?

13 A Oh, I'm sorry. Yes. I'm 22. Yeah.

14 Q Oh, I'm sorry. I was ready for you.

15 A Oh

16 Q All right. What is Exhibit Number 22?

17 A So I'm sorry. What's your question?

18 Q What is Exhibit Number 22?

19 A Exhibit 22 is a stock purchase agreement where VSI is
20 agreeing to purchase shares in Stream for -- equity for \$1.4
21 million.

22 Q All right. And to go a little bit quick since these
23 exhibits are going to be admitted anyway, so let's just talk
24 about the stock purchase. What are these stock purchase
25 agreements do?

1 A These -- essentially, they -- they allow for VSI to buy
2 equity in stream for fixed aggregate amounts with the
3 mechanism being that VSI would pay Stream expenses for the
4 benefit of Stream and then acquire equity that it would
5 accumulate by periodic reporting against those stock purchase
6 agreements.

7 Q And once again, the equity is to convert Hawk. So it's
8 for a specific amount, right? Like, there wasn't going to be
9 an unending equity investment in the Stream from VSI?

10 A Correct. And I would just point out that this
11 particular agreement, why it is such a specific number, is
12 that this was tied to -- this agreement is dated February
13 27th of 2023. And there was a calculation done by Stream on
14 certain amount of expenses that have been paid
15 pre-petitioned. So this was meant to offset a particular
16 batch of expenses.

17 Q Okay. So how many subscription agreements were there?

18 A There were three pre-petition expenses --

19 Q Yeah.

20 A -- or purchase agreements, and then two post-petition
21 ones that I can recall.

22 Q What are the two post-petition ones?

23 A Post-petition, there was -- they were both in July of
24 2023. One was for \$2 million. This is right at the time
25 that VSI is offering to sponsor Streams plan of

1 reorganization.

2 Q Right.

3 A So there's a \$35 million stock purchase agreement,
4 which is intended to support the reorganization plan. And
5 then there was one a couple of days later in the amount of \$2
6 million which was meant to support Stream during the period
7 prior to an up through plan confirmation and to basically
8 kind of make sure there was a surplus in the conversion of
9 Hawk.

10 Q All right. So that -- that was -- let's -- so I kind
11 of do two categories. We got the \$35 million one. But that
12 was never triggered, right, because there was no plan? There
13 was no --

14 MR. COREN: Object to leading the witness. We're
15 getting in the areas which may be important.

16 BY MR. SWICK:

17 Q Okay. There's a \$35 million stock purchase agreement,
18 right?

19 A There is a 35 million --

20 Q What's was its purpose?

21 A Its purpose was to support the plan or reorganization
22 that was filed.

23 MR. COREN: Object to this witness testifying
24 about the purpose of an agreement that he's not a party to.

25 MR. SWICK: I think he testified that he was aware

1 of the arrangements, so if I can parse that through.

2 THE COURT: Yeah, I think his foundation has been
3 laid, I would say.

4 BY MR. SWICK:

5 Q Okay. So you are familiar with all these agreements,
6 correct?

7 A I was. I work closely with Stream's counsel on the
8 plan of reorganization, providing all of the historical and
9 factual background that went into the disclosure statement.

10 Q Okay. And so was money ever drawn down on the \$35
11 million?

12 A Not that I'm aware of, no.

13 Q Okay. So you have these other stock purchase
14 agreements, right? Were -- were all those fully drawn down
15 on?

16 A Yes. By -- by the end of November of 2023, the three
17 pre-petition agreements and the \$2 million July one, all of
18 those totaled 5.7 million, and I think we went a little over.

19 Q Okay. So prior to the Trustee even getting appointed,
20 there was no more subscription agreement governing any amount
21 of money being transferred from VSI to Stream?

22 A Other than the \$35 million to support the plan, no, not
23 that I'm aware of.

24 Q Okay.

25 A Not that I'm aware of.

1 Q Let's go back to the process. Was there a process that
2 was followed regarding how this transfer of money and shares
3 went through -- went across?

4 A There was. And I have to say it was -- at the
5 beginning, it was not very well organized. So the -- in the
6 pre-petition time period, the assumption was that when the
7 subscription agreement was -- was fulfilled, that VSI had
8 spent enough money on Stream, that at that point there would
9 be an accounting, and we would call that agreement done.

10 But as we got into the bankruptcy, bankruptcy counsel
11 advised us that, you know, your monthly operating reports
12 have to reflect the fact that VSI is making payments on
13 behalf of the Debtor. And so a couple of months into the
14 bankruptcy in June, Stream prepared proper accounting, sent
15 it to VSI saying, okay, here's -- here's all the things that
16 you paid on our behalf.

17 And then VSI issued three periodic reports that covered
18 the first half of 2021 pre-petition, another report for the
19 second half of 2022 pre-petition and a half of the -- or most
20 of the first quarter report that covered January through
21 March pre-petition. So those three reports were generated by
22 Stream provided to VSI, Dan Rink (phonetic) at VSI then sent
23 requests for the equity distribution. And then that was, you
24 know, I think, in June, and it really took a few months
25 before Stream really was tracking and accounting things

1 properly.

2 Q Okay. Let's -- let's go to page -- well, you say that,
3 but this looks like a pretty formal process. I mean, look at
4 Exhibit 30 for me.

5 A 31?

6 Q Just 30.

7 A Oh, 30. Okay. Yeah, I'm there.

8 Q All right. What is this document?

9 A This is a request from VSI for the issuance of equity
10 for the first post-petition month, partial month.

11 Q All right. Let's take -- look at Page 2 of this
12 document. What is that?

13 A Page 2 is -- I recognize this format. This was
14 generated by Suby Joseph, a Stream TV accountant, where he
15 tracked all the expenses that were paid by VSI in the
16 reporting period. This is what he would have provided to VSI
17 saying, this is what you've paid on our behalf.

18 Q And were you involved in this process? Did you get
19 these reports?

20 A Yes. I would see these accounting reports from Suby
21 before they went to VSI, and he and I would review them to
22 make sure that everything on there had actually been paid,
23 and that they were for the benefit of the stream.

24 Q All right. You on behalf of Stream look at these, okay
25 them, gets sent to Dan.

1 A Correct.

2 Q But I guess, the way I look at that, that's Stream
3 saying, hey, we got money, can we go and apply this to one of
4 the subscription agreements; is that right?

5 A Yes, correct.

6 Q Okay. Then this from -- from Dan. All right. All
7 right. That's VSI saying, yes, that's cool. You -- you can
8 have the equity, and we'll take the equity, right?

9 A Correct.

10 Q Okay. And then Stream would give it the equitor
11 (phonetic) or the Creditor or whatever. All right. And so
12 we have Exhibit -- let's see. There's -- oh, so Exhibit 30
13 is actually several of these letters, right?

14 A It appears to be the case, yes. Each letter is for a
15 different calendar month --

16 Q Okay.

17 A -- consecutive.

18 Q So why was it important to have all this papered up?

19 A Well, number one, we wanted to -- at Stream, we wanted
20 to confirm that investment had been received, that these
21 stock purchase agreements, which were evidence of investment
22 had been fulfilled. And by generating expense reports
23 saying, okay, these are Stream expenses that you paid and
24 then having the reciprocal demand for equity was really just
25 laying the foundation that the stock purchase agreements were

1 valid and had been implemented and executed in parts.

2 Q Did the Hawk party litigation and all that have
3 anything to do with it?

4 A Well, yeah, because we knew that the Hawk parties, had
5 already challenged the documentation that had been presented,
6 in October of 2022. And so Stream -- both Stream and VSI
7 wanted to be especially careful to be very specific in the
8 documentation of how the transaction was going.

9 Q So it's very important, essentially, to have this thing
10 documented correctly?

11 A Correct. And I should point out that Dan Rink, who
12 made the demands for VSI, he was not a Stream employee. He
13 was strictly VSI.

14 Q Okay. Okay. Let's go back to where I put that pin.
15 Mr. Homony gets appointed here. So you just testified all
16 these subscription agreements, all this arrangement, that
17 all -- it'd been used up. There weren't any other
18 subscription agreements. Is that what you testified about?

19 A Not that I know of.

20 Q Okay.

21 A Correct.

22 Q So he get -- let's go back to -- you mentioned briefly,
23 you have your -- I think you said -- I'm not trying to put
24 words in the witness' mouth that you were hopeful. Let's
25 talk about that. January, February, March while you're being

1 employed by the Stream and at Mr. Homony direction.

2 A Yeah. I'm sorry. What --

3 Q Ten-thousand-foot overview. Like, how -- what was
4 going on?

5 A Well, my understanding from his appointment was that he
6 had certain primary directives from the Court, which was to
7 ascertain the validity of the purchase orders, secure the
8 return of the assets, determine the status of the
9 conversion -- the debt conversion, and generally operate the
10 company. And so one of the first projects we got was a huge
11 project.

12 Q Hold on. Let me do a little bit more foundation --

13 A Okay.

14 Q here. You did mention earlier that Ms. Maneen was the
15 primary contact. Have you -- did Mr. Homony know of your
16 existence when -- when he was brought on board? How did he
17 know that you were a Stream employee?

18 A Mr. Homony was brought on board middle of January-ish.
19 I don't remember the exact date, but Stream had a payroll
20 date that we generally were paid on or about the 7th and the
21 22nd of the month. And so he was aware that payroll was
22 coming due and Ms. Maneen provided him a list of what the
23 payroll obligation was.

24 And my understanding from Ms. Maneen was that it was a
25 detailed list of the various people and the amounts that

1 needed to be paid.

2 Q And then --

3 A So he would have known that I was a Stream employee
4 based on the list that she provided.

5 Q Okay. And since we're here, how did that get paid?

6 A Well, in mid-January, the Trustee had not yet set up a
7 DIP account with him in control. So the only DIP account
8 that Stream TV had was an account that Mathu Rajan was the
9 signatory for. And so the Trustee authorized Mr. Rajan to
10 release payroll, which he did. So I got paid by Stream
11 through the DIP account under Mr. Rajan's control in January.

12 Q Okay. And I want to come back to how you're paid and
13 more about it. But now let's go back to -- you started
14 mentioning big projects that you're working on. What was --
15 actually, let me back up even more. So -- so did you ever
16 talk to Mr. Homony?

17 A I had very little interaction with Mr. Homony. I don't
18 know that I ever spoke to him. Well, I take that back. I
19 was probably on one or two Zoom calls where -- where he was
20 there, but there really wasn't much interaction there. There
21 was a little bit of email interaction, but as I said, it was
22 almost exclusively through Ms. Maneen, who --

23 Q Yeah.

24 A -- who got from him what projects needed to be done.

25 And then I won't say she delegated, but to a certain degree,

1 she did. She would say, okay, well, that's in Bud
2 Robertson's purview. Bud, this is what we need to provide
3 for the Trustee, Suby Joseph. He needs these accounting
4 things. Can you run these reports?

5 So she pulled from the various departments what
6 information was needed. And if he said jump, we asked her
7 how high does he want us to jump.

8 Q All right. Now -- so now we know how the chain of
9 command is working. Ms. Maneen is the point of contact with
10 the Trustee. Trustee tells her what he needs. And what does
11 he need and what are you doing for Mr. Homony during this
12 time?

13 A Well, one of the biggest projects was the Hawk
14 conversion. As I said earlier, that -- that was probably the
15 biggest albatross around the neck of Stream TV. Is this \$150
16 million debt or is it no debt, but equity? That's a make or
17 break on where the company's future lies.

18 And so we provided some information to the Trustee on
19 the conversion, and the word that I got back through Ms.
20 Maneen was, Alex (phonetic), he wants --

21 MR. COREN: Objection to the word he got back from
22 somebody.

23 THE WITNESS: The direction I got from Ms. Maneen
24 was that what was initially provided -- oh, sorry. There was
25 an objection. I shouldn't talk.

1 THE COURT: I'm going to -- I'm going to overrule
2 the objection --

3 MR. SWICK: Yeah.

4 THE COURT: -- for the time being, but -- yeah,
5 proceed. If -- if we start going too much further -- I mean,
6 Ms. Maneen is going to testify, so I'm trying to shortcut
7 this given that we've been -- we're going pretty (inaudible).

8 MR. SWICK: Yeah, I'm with you. I'm with you,
9 Your Honor. I'm trying to --

10 THE WITNESS: I'll try to talk faster too.

11 MR. SWICK: Yeah.

12 THE WITNESS: So it was --

13 THE COURT: Not to talk faster, but --

14 THE WITNESS: It was a very large accounting
15 project that had several iterations, and there were four of
16 us, maybe five, that worked on the Hawk conversion creating
17 many hundreds of pages, maybe -- I would say, maybe even a
18 couple thousand pages of documentation to the penny of every
19 dollar that Stream raised starting from January of 2018,
20 proof of wire receipts, bank statements, did the money come
21 in, how did it come in, what's the underlying stock purchase
22 agreement that showed it was an investment, what were the
23 terms of that investment, was that money spent for the
24 benefit of Stream or did Mathu Rajan buy a yacht in the, you
25 know, in Mediterranean, right?

1 So we had to show that the money came in for
2 Stream, that it was actually received, that it was spent on
3 Stream expenses, vendor invoices, all of that to the penny
4 for several years, and that's what we did for weekends and
5 evenings even for weeks and weeks.

6 BY MR. SWICK:

7 Q All right. So that's conversion. What else did you
8 work on?

9 A I supported the request for the return of the assets
10 because I was the one from an operational standpoint that had
11 been tracking what assets had been surrendered, and what
12 assets minimally had been returned, which things were still
13 outstanding, and where in the world were they, to the best of
14 my knowledge. So I'd been tracking that information. I
15 provided that to Ms. Maneen so that the Trustee could, pursue
16 the return of the assets.

17 Q All right. So trying to figure out how to convert,
18 trying to figure out how to get the assets. What are some
19 other buckets of work that you were working on?

20 A One area that wasn't my primary responsibility, but I
21 jumped in when it -- as an executive of Stream, I -- I always
22 tried to monitor everything that was going on. And if I saw
23 something going off the rails, I would jump in.

24 And so a couple of times, I had to jump in with regard
25 to the, royalty reporting requirement for Phillips. Our

1 license agreement required that we file quarterly reports
2 telling them how much we've sold so they could charge us the
3 appropriate royalty amount.

4 So I had to step in shortly after the Trustee was
5 appointed, number one, to educate him on what the requirement
6 was because we've been trying to get that information from
7 Mr. Stastney, who was not providing it as the director of the
8 Dutch subsidiary. He was obliged to do that, and he was
9 ignoring that responsibility. So I worked with the Trustee
10 to get that information and file the Q4 report, which was due
11 in January.

12 And then I had to get involved again in September when
13 the first and second quarter reporting requirements were not
14 handled and Phillips sent a breach notice saying that they
15 were going to cancel the license if we didn't --

16 Q Okay.

17 A -- take care of that.

18 Q We have an exhibit on that. So let's look at that.
19 Let me find it.

20 MR. COREN: I'm sorry. What are we looking for?

21 MR. SWICK: The September of 2024 email.

22 MR. COREN: 2024. We don't have that on ours.

23 Wait, here's -- VSI 9?

24 MR. SWICK: Yeah, it's going to be early. That's
25 right. That's why I skipped over it. Well, let me see real

1 quick. Yeah, it's VSI Exhibit No. 9.

2 THE WITNESS: Sorry, my binder's coming apart
3 here. Did you say 9?

4 MR. SWICK: Yeah.

5 THE WITNESS: Okay. Okay, I'm there.

6 BY MR. SWICK:

7 Q All right. So we don't need to start at the top.
8 Let's start at the bottom. Actually, just take a look at it.
9 I don't want to redo the whole thing in the interest of time.
10 Just take a look at the whole email, then we'll talk about
11 it. You know what it is?

12 A I'm very familiar with this. Yes.

13 Q Okay. What is what is this exchange here? And what is
14 the date?

15 A The date of this is September 10th, 2024. The thread
16 actually starts earlier on the 9th of September.

17 Q Just go ahead and summarize the thread.

18 A So Suby Joseph notified me that that Stream had
19 received a breach notice for failure to report the royalties.
20 So I wrote to the Trustee, and I said, we have this quarterly
21 obligation. You helped provide the numbers in January for
22 Q4, the previous year, but we missed April for Q1, and now
23 we've missed July for Q2, and we're two months late.

24 And essentially, if you don't get sales data from The
25 Netherlands, then Phillips is within their right to cancel

1 the contract. And if that happens, the Stream technology is
2 worth zero, and you don't want that happening on your watch.

3 Q Okay. And so Suby is Stream, you're employed by who at
4 this time?

5 A Stream.

6 Q Okay. And this -- yeah. Your email was with Stream
7 Acquisition Group. Right? That's your email on here?

8 A Correct. That -- yeah. Because we were unable to use
9 the domain, which was being controlled in The Netherlands, we
10 formed this alternative Stream domain for email use. Yeah.

11 Q Okay. I'm going to risk getting into this top email.
12 Okay. What is this top email from Bill Homony back to you,
13 sir?

14 A Well, the -- that response comes from -- part of my --
15 part of my email said, look, I know SeeCubic BV is under a
16 TRO, and they're not supposed to be using the Stream
17 technology, but we know because it's a small industry, you
18 hear things, we know that they've sold some samples. And in
19 fact, they admitted that they were selling some samples.

20 We need correct sales data. We can't give Phillips,
21 wrong data because worse than filing no report is filing a
22 false report. So even though SeeCubic BV is under a TRO, you
23 got to get real data so that we can file this.

24 And so his response was don't worry about the TRO. I
25 took care of it. It's no longer in effect. Here are the

1 numbers, for the report. Please have Suby file a report.

2 Q What is your understanding of this TRO that he's
3 talking about?

4 A Well, my understanding is that the enjoined parties,
5 which were not just SeeCubic Inc. and Hawk, but also our own
6 subsidiary, SeeCubic BV, the reason why they were enjoined is
7 because they were under the control of SeeCubic Inc.
8 director, and SeeCubic BV was allowed to make units for
9 Phillips.

10 I'm sorry. They could use the Phillips IP to make
11 units if it was for the benefit of Stream because Stream held
12 the license. SeeCubic BV does not have a Phillips license,
13 just like SeeCubic BV did not have a Rembrandt license, but
14 SeeCubic BV could make products using the Rembrandt
15 technology if it's for the benefit of Stream.

16 What we know about these units is SeeCubic BV was
17 making those units for the benefit of SeeCubic Inc., not for
18 the benefit of Stream. So they were technically violating
19 the license, and that's why there was a restraining order
20 that included them because they were not allowed to do
21 anything that would quote affect Stream's license.

22 And by selling products without a license affects
23 Stream's license. So they were enjoined from doing that, and
24 I was concerned that they were being allowed to make and sell
25 product for the benefit of Shad Stastney and SeeCubic Inc. in

1 violation of the Phillips license.

2 But at the same time, I didn't want to say, well, let's
3 just file zeros because then at least we won't be in trouble
4 with Phillips, but now we're lying about whether units were
5 actually made. And as I said, it's a small industry. People
6 knew that SeeCubic BV had delivered units to Hyundai Mobis
7 for a mobile project, an automotive project.

8 Q Okay. And Trustee says here the TRO is no longer in
9 effect. I'm just talking what's filed on the docket. Didn't
10 the TRO get upped by the Judge Coleman or Judge Chan multiple
11 times after the 9019 was agreed to?

12 A It was extended four or five times all the way until
13 February of 2025. So it was -- it was still on the docket
14 and listed as effective at the time of this email and after.

15 Q Okay. So my violations were going on, and the Trustee
16 knows it, but that's what the email says. All right. Let's
17 go back to you. Let's talk about what happened in this.
18 So I think, you know, you were hopeful with Mr. Homony.

19 Let's just talk about January, February, March. How many
20 hours do you think you spent working for Stream during
21 January, February, March?

22 A Well, I wish I could say it was a 40-hour week, but as
23 I said, we did evenings and weekends on the conversion
24 project alone, so it's hundreds of hours.

25 Q Okay. And all the subcontract employees, I don't know

1 exact, but just ballpark. Is everybody working as hard as
2 you? That is probably the best way to put it.

3 A Yeah. Yeah. I was managing that project, and
4 reporting to Ms. Maneen on how it was going. And I farmed
5 out, you know, bank statements went to Amanda Gonzalez. Her
6 job was to go through and mark up the bank statements, and
7 Sarah Brewer was doing some stuff, and Suby Joseph was doing
8 another chunk.

9 And each of them were feeding into me, and I was
10 creating the master spreadsheet and tracking all of these
11 many hundreds of pages of supporting data as we built out a
12 whole, folder structure on box in the cloud. So that way the
13 Trustee and his team would be able to go note by note and see
14 what investment had come into Stream, how it was applied, and
15 applicable to retire or extinguish Hawk note one, Hawk note
16 two, Hawk note three.

17 Q And where was Mr. Rajon during all this? He's thrown
18 out. Right? He's no longer in control. We got the Trustee.

19 A He was not really involved in any of this. He was
20 doing VSI things, working on, you know, raising funds for VSI
21 so that VSI could continue in its support thing. But once
22 the Trustee was appointed, he basically said, you guys don't
23 look to me anymore. I'm not in charge. The Trustee will
24 give direction.

25 And he thought it was a great idea that Nicole was the

1 point person that -- because she had been primary
2 administrative assistant to him over all that time, and so
3 she knew all the moving parts and who was responsible for
4 what. So she was a logical choice to facilitate that.

5 Q Did you do work for anybody besides Mr. Homony? Let's
6 just start with these three months right here, January,
7 February, March.

8 A You mean for Mr. Homony or for Stream?

9 Q Did you do any work -- you definitely did work for Mr.
10 Homony. You've testified about that.

11 A Yep.

12 Q And Stream. Right? Did you do work for anybody else
13 during that time?

14 A I had a handful of calls with -- VSI had acquired, or
15 was in the process of acquiring, a hologram technology, which
16 has nothing to do with the Stream technology, and being the
17 operations guy for Stream, I had a handful of calls with the
18 founder of that technology, who wanted to know how things
19 were going with Stream in the bankruptcy and how that was
20 going to impact the acquisition. So I, you know, I was
21 probably wearing a Stream hat and a VSI hat both when I
22 talked to that guy.

23 Q So earlier I said, what was -- what did VSI do, and we
24 talked about two things. We said, we said supporting Stream
25 and that's distributor agreement. You mentioned something

1 about hologram. Like, just talk about that real quick. And
2 is that -- so VSI, this hologram and what is that?

3 A Well, VSI's sort of stated mission is to bring advanced
4 imaging technologies to a global market. And the UltraD
5 technology of -- I think it's the first time I've used that
6 word today, but the technology of Stream TV which we had
7 trademarked UltraD, that was the crown jewel in VSI's plan to
8 go to market.

9 But VSI, having watched how long Stream had been in
10 litigation, was exploring other potential technologies that
11 it could also bring to market. And it encountered this
12 hologram technology, pre-petition. I think the discussion
13 started before Stream was in bankruptcy.

14 Q So to your knowledge, does VSI do anything else besides
15 these three buckets that we've now talked about? So hologram
16 technology has nothing to do with Stream. Distributor
17 agreement and trying to make sure Stream gets off the ground,
18 is there anything else?

19 A Not that I'm aware of.

20 Q Okay. So how -- let's get -- no. So okay. So let's
21 keep going down a little bit of the time line here. So you
22 did a whole bunch of work. You only worked for Mr. Homony.
23 How many hours did you say you were -- let's talk about
24 percentages. What's the percentage that you did with
25 hologram stuff for VSI versus the amount of work you were

1 doing for string?

2 A Handful of phone calls versus hundreds of hours.
3 Ninety nine point nine percent of my time was on Stream
4 things.

5 Q Okay. All right. So then let's keep that. So then --
6 all right. So we have January, February.
7 Let's talk about March. What happened in March?

8 A In March, there was a meeting with Ms. Maneen and Mr.
9 Rajan and Stream's bankruptcy counsel, Lewis Brisbois. I
10 don't know if they were still the bankruptcy counsel at that
11 point. I suppose maybe not.

12 But there was a meeting in Philadelphia to show him the
13 technology and sort of talk about how things were going to
14 proceed. I was not there, so I can't talk about the content
15 of that. I just know that the that the meeting happened.
16 And Ms. Maneen, following the meeting, looped me into some
17 communication, where getting the return on the assets had
18 become a priority now and in particular the bonding machine.

19 So we had attempted to get the bonding machine back
20 from SeeCubic BV. There's a warehouse in China where the
21 bonding equipment is held. During the time that we didn't
22 have possession due to the omnibus agreement, the equipment
23 was put in the name -- and I'm not saying it was titled, but
24 the warehouse lease was in the name of our Dutch subsidiary.

25 And so they were refusing to release the equipment

1 saying, you know, until somebody tells us we have to do it.

2 And it seemed like, from the communication that I saw with

3 Patrick Toon, whose name was mentioned before, he was a

4 manager over at the Dutch subsidiary, SeeCubic BV, that that

5 equipment was finally going to get released, and Ms. Maneen

6 was put in charge of facilitating the return of that

7 equipment. That was mid-March, I believe.

8 Q Who put her in charge of getting that equipment?

9 A The Trustee did.

10 Q Okay. All right. So I I'll just keep going. Well,

11 actually, let's put a pin in that. We're going to come back

12 to that. So there's employees -- you're a contract employee.

13 Right?

14 A Correct.

15 Q Okay. And you got paid -- how often did you get paid?

16 A I invoiced -- I invoiced twice a month. I got paid

17 sporadically, periodically.

18 Q All right. So since once Mr. Homony was appointed,

19 let's just -- let's just keep it through March right now.

20 We'll get to those stuff later. How are you paid during that

21 period of time?

22 A In -- at the January, I got my -- just before the

23 Trustee was appointed, I got paid one check on time from

24 Stream. After Mr. Homony's appointment, I got paid another

25 check in mid to late January, from the Mathu Rajan controlled

1 bank account after he received authorization and direction
2 from the Trustee to pay.

3 And then by February, the Trustee had set up his own
4 DIP account for Stream, and Stream had -- Mathu Rajan had
5 moved the funds from the account that he controlled over into
6 the account that the Trustee controlled.

7 Q All those funds, this is what you're aware of, came
8 from the VSI that were now in the Stream account under the
9 control of Mr. Homony.

10 A Correct.

11 Q Okay. The Stream was still not producing anything or
12 generating any revenue?

13 A Stream had no revenue. Correct.

14 Q Okay. And was that -- was it just a DIP account or did
15 Mr. Homony ask for more money in addition to what just came
16 over with the DIP account?

17 A Well, I know that VSI was asked to fund payroll, which
18 it did twice in February for each of the February 8th payment
19 and the February 22nd. I might be off by a day or so. It
20 depends on how long it takes to hit an individual account. I
21 got paid on the 8th and the 22nd.

22 Q Okay. Let's go to -- let's go to Exhibit No. 1.

23 A Which number?

24 Q No. 1.

25 A 1. Okay.

1 Q This is our initial motion for administrative expense.
2 Okay. I'm on Page 3 of 8. Like, click on the top of the
3 style from the case.

4 A Okay.

5 Q All right. Now this is our motion for administrative
6 expenses. Have you looked at this?

7 A Yes. I've seen this.

8 Q Okay. Are you familiar with this chart that I'm
9 looking at right now?

10 A Yes.

11 Q Okay. Now, just explain this chart to us. What is
12 this?

13 A This is a list of all the Stream related expenses paid
14 on behalf of Stream by VSI that were not otherwise covered by
15 the VSI demands for equity, which the last equity demand from
16 VSI came in December for the month of November 2023.

17 Q Right. Well, what you said is almost true. Right?
18 Because isn't -- didn't you find there was an accounting
19 error and how much that we are alleging as our administrative
20 claim?

21 A I did. Correct. So as I was reviewing this after the
22 filing, I wanted to make sure that this amount was correct.
23 And so I spoke to Suby Joseph about the basis for the
24 calculations, and it's my understanding that this table was
25 based on payments made by VSI commencing October 6th of 2023,

1 whereas VSI had already demanded and received equity for
2 payments through November 30.

3 Q Okay.

4 A So there's actually seven week overlap. There's seven
5 weeks of expenses in this table.

6 Q It should not be here.

7 A That should not be --

8 Q How much money is that?

9 A Looking at the letters from Dan Rink on the cash that
10 was spent in October, November, and prorating October by
11 three quarters, it's about \$150,000.

12 Q Okay. Sorry. The administrative claim, I think, is
13 like \$1,200,000. It just needs to be reduced by \$150,000.
14 We have to do that calculation.

15 A Yeah. It should be closer to \$1,100,000, I believe.

16 Q Just a second. All right. Go to Exhibit No. 31,
17 please.

18 A Okay.

19 Q All right. I'm on paragraph 18 and 19, can you turn to
20 that? Actually, before you do that, let me ask you this
21 question.

22 All right. So the money is coming in from VSI going to
23 Mr. Homony. That's what you testified about. And Mr. Homony
24 is making payments for the estate. What is Mr. Homony
25 spending money on? Are you aware of that?

1 A Well, certainly payroll because I received two checks
2 directly from him and his TriState DIP account. There --
3 what is -- what is he spending money on or --

4 Q VSI is giving -- putting money in and VSI money is
5 getting spent by Mr. Homony. What's getting spent? You're
6 familiar with how the Stream and the operations, like, what
7 is the money that --

8 A Well, I can -- I can tell you what Stream was spending
9 money on prior to the Trustee's appointment and money that
10 VSI put in for those expenses. And, you know, I can surmise
11 that the Trustee continued to pay those types of items, but I
12 don't have access to his account to know what he paid.

13 Q Well, you just said you're --

14 THE COURT: I think he just said he had no idea
15 what --

16 MR. SWICK: I'm going to rehabilitate him.

17 THE COURT: I don't know if you can rehabilitate
18 your own witness.

19 BY MR. SWICK:

20 Q Well, we originally when we went through the motion for
21 a minute, there's a chart. Right? It had all these expenses
22 that were paid out post-petition by Mr. Homony. And you said
23 you were familiar with that chart. So you had an -- you were
24 able to calculate out what actually was spent. Right?

25 A Well, what I said is those are -- those are items that

1 were spent that were paid by VSI for Stream's benefit that
2 benefited the estate and were paid by VSI. Those weren't
3 things that were paid by Mr. Homony.

4 Q Okay. so --

5 A That's where you're losing me because I don't know what
6 Mr. Homony paid.

7 Q Okay. But you know that --

8 A Other than me.

9 Q But you know what was getting paid for on behalf of the
10 estate after Mr. Homony is appointed?

11 A Correct.

12 Q Okay. So that's what we're talking about. So VSI is
13 putting money in and it's going out because Suby set those --
14 those are part of the reports, but this is different. So you
15 have -- so what I'm saying is, so you do know. All right?
16 So --

17 A Yeah. There's insurance. There's U.S. Trustee fees.
18 There's a little bit of travel-related to the customer
19 maintenance and the purchase orders. There's the contractor
20 employees. There's the contractor health benefits. There's
21 storage for inventory because of the -- I didn't detail, but
22 one of the minimal things that were returned by SeeCubic Inc.
23 when they were required to return things that they did hand
24 over some inventory that was -- that they had held that those
25 screens were several years old by that point.

1 Q Okay. So VSI paid for U.S. Trustee fees. You're --

2 A That's right. Yes.

3 Q Storage facilities, employees, insurance?

4 A Yes. Business insurance and health insurance.

5 Q And none of that was covered by a subscription
6 agreement. Right?

7 MR. COREN: Objection.

8 BY MR. SWICK:

9 Q Was any of that covered by a subscription agreement?
10 This is all after November of 2023.

11 MR. COREN: Your Honor, he's testifying.

12 THE WITNESS: I know what you're asking, but the
13 subscription agreement merely says that VSI is going to buy
14 equity in VSI, in Stream, and it's going to pay a certain
15 amount of money. So if you're asking me were there available
16 subscription agreements to backstop the payments that VSI
17 continued to make, that's your question. The answer is no.

18 BY MR. SWICK:

19 Q That was my question. Very not well -- on the back.
20 All right. I mean, there's another exhibit we need to get
21 to. Exhibit 53, way at the back. Are you there?

22 A I'm there.

23 Q Okay. So I'm looking at the third entry down. Can you
24 just -- I don't want you to read a whole bunch, but I just
25 want you to read what this is.

1 A The fourth entry down or the third?

2 Q Correct. Yeah. February 8, the fourth one down.

3 Sorry.

4 A Okay. Fedwire Credit via TriState Capital Bank with an
5 account number, BO William Homony, Philadelphia, PA.

6 Q And what is this for?

7 A This is a wire payment of my invoice that was due on
8 February 7th.

9 Q Okay. So and -- so Mr. Homony got money from VSI and
10 paid you this salary because you're a subcontractor you're a
11 contract employee for Stream.

12 THE COURT: I'm really trying to help you out, but
13 you got to be a little bit more careful with the leading
14 question.

15 MR. SWICK: Sorry. You're right.

16 THE COURT: I mean, he's going to keep objecting.

17 So --

18 MR. SWICK: Yeah. Yeah. If it is -- I'm sorry.
19 I'm also trying to do the time. I'm almost --

20 THE COURT: I understand. But --

21 MR. SWICK: All right. Yep.

22 BY MR. SWICK:

23 Q All right. So well, so Mr. Homony paid you this
24 amount?

25 A That's correct.

1 Q Because you were -- well, why did he give you the
2 amount?

3 A Because I performed services for Stream. I submitted
4 an invoice. Invoices were generally paid twice a month, and
5 that's when my invoice for -- that would have been for
6 services in the back half of January.

7 Q Okay. You've already testified that you've got a whole
8 bunch of -- you did a whole bunch of work for stream at the
9 direction of Mr. Homony. All right? And we were really
10 talking about this January to March time frame. All right.
11 So something happened in late -- what happened in late March,
12 and then how does this relationship go from there?

13 A I was assisting Ms. Maneen in obtaining the return of
14 the bonding equipment. One of the things that I had been
15 tasked with was coordinating with -- we had some Stream
16 contract employees in China, and they were exploring
17 insurance options to make sure that the bonding equipment
18 would stay insured during its transportation and setup.

19 We had arranged with Systar International, the customer
20 that put up the purchase order, they were going to provide
21 warehouse space where we could install the bonding equipment,
22 and we could get it up and running bonding for third parties
23 and making a bonding fee from these other customers.

24 So the chance to generate some revenue just by putting
25 the bonding equipment to work, but the secured creditors had

1 said that they wanted to make sure the equipment was insured,
2 and we have a variety of things to do to meet those needs.
3 So I was assisting with exploring insurance options, and then
4 I was notified by Ms. Maneen that the whole bonding equipment
5 return had stopped.

6 Q Why did it stop?

7 A It stopped because the Trustee was concerned about
8 transportation costs and wanted VSI to provide an
9 unrestricted DIP loan in the amount of \$5,000,000 before he
10 would entertain moving the equipment.

11 Q Okay. And did VSI -- was VSI amenable to giving a
12 \$5,000,000 DIP loan?

13 A No. We were not.

14 Q Okay. Okay then. So that communication gets out, and
15 what happened after that?

16 A The equipment stayed where it was. I didn't see any
17 more requests come to me for identification of additional
18 assets or assistance with procuring their return. There was
19 not a whole lot of direction on things to do.

20 Q You are aware of this 9019 agreement. Correct? Until
21 earlier in the --

22 A Yes.

23 Q Okay. You're aware of that to your own personal
24 knowledge, not through just this procedure?

25 A I attended all the hearings via Zoom. I read the

1 documents as they were filed. Yes.

2 Q Okay. And so it looks like the Trustee decided to go a
3 different direction. Is that a fair way to say it?

4 A Yes. Correct.

5 Q Okay. How did you feel about that once you learned --
6 when did you learn about it actually? Let's start there.

7 A Following the March meeting, Ms. Maneen was very
8 enthusiastic about the support that we were going to get,
9 finally, as a Stream team with the Trustee.

10 We thought maybe the Trustee can get done what Mathu
11 Rajan couldn't because at least he's an agent of the Court.
12 And so we were very optimistic that Stream would finally get
13 back its assets and be able to execute on the purchase
14 orders. And that's actually one thing that you didn't ask me
15 about. But one of the things that we did --

16 MR. COREN: Objection, Your Honor. He's supposed
17 to answer questions he's asked about.

18 THE COURT: I don't know. I mean, he can -- he's
19 testifying, so it's open on cross. You can finish your
20 answer.

21 THE WITNESS: One of the -- and this leads into
22 where I was answering your question is that the Trustee had
23 asked us to get confirmation that the purchase orders that
24 had been issued in early 2023 were still valid in 2024, and
25 we had done that.

1 So we were hopeful that having just gotten renewed
2 confirmations that the orders were real, that we were finally
3 going to do that. So we were blindsided and, you know, we
4 felt betrayed that, you know, here we've fought so hard to
5 keep the company together and to get customers and get back
6 to market. We've seen -- my greatest joy was showing people
7 this technology. I'm sorry, Adam, you've never had a chance
8 to see it, but it's magical. And people's jaws drop open and
9 they say, how do you do that?

10 And I was very excited that we -- it looked like
11 there was a path forward for the company and then the rug was
12 pulled out from under us when there was a deal to just
13 liquidate the company rather than try to save it.

14 BY MR. SWICK:

15 Q All right. So you talked right before this about --
16 well, actually, let's just finish this line right here.
17 Okay? So all right. So you learned about -- you know
18 about -- when you learned -- so you said March is when you
19 learned that. And then it looks -- there was this email in
20 the September of 2024. So what were you doing between March
21 and September of 2024?

22 A Well, I wouldn't say that I learned about the 9019 in
23 March because that wasn't signed until the beginning of May.
24 So in March, it became clear that the push to get the assets
25 back was now on a back burner.

1 But it was really in May that we saw the draft of the
2 settlement agreement, and we realized that the Trustee was
3 now on a path to liquidate the company rather than save it.
4 I know that VSI continued to work on arranging funding to
5 support its own plan since the Stream plan of reorganization
6 hadn't, you know, gotten any traction and that was now eight
7 months old or whatever. So I was just basically standing by
8 in support of anything that could help save the company.

9 Q So were you ever fired?

10 A No.

11 Q Like, formally? Were you fired?

12 A No.

13 Q Informally?

14 A No.

15 Q Was there any communication with you whatsoever as to
16 what your role was going to be basically post-March?

17 A No. In fact, the Trustee was still communicating with
18 me in September about the license with Phillips and --

19 Q Okay. So when did you consider that you were no longer
20 working for Mr. Homony and Stream?

21 A I would say it's right around September. VSI had, at
22 the Trustee's request, VSI had procured proof of funds. It
23 was about \$170,000,000 proof of funds, because the Trustee,
24 it was my understanding anyway, that the Trustee had
25 communicated that any sort of plan that would replace the --

1 you know, if you want to save the company and not liquidate
2 it, then you're going to need a plan that pays the secured
3 creditors, you know, a hundred cents on the dollar or
4 something close. So this is -- your \$35,000,000 plan is not
5 going to fly. You're going to need something considerably
6 higher.

7 And so VSI got that \$170,000,000 proof of funds, and
8 was engaged with the Trustee about a possible plan. And my
9 understanding is that there was a meeting arranged by VSI
10 where the Trustee was able to meet the anchor investor of
11 Stream.

12 But ultimately, that path was rejected. And at that
13 point, it was clear that Stream was going to be liquidated.
14 There was no chance of reorganization under the Trustee, and
15 there's no company to work for at that point.

16 Q And you're kind of in this netherworld through
17 September, and then when you sent that the email that we put
18 in there, we talked about earlier, and that's your same
19 thought was really when you -- when you considered it to be
20 over?

21 A That -- correct.

22 Q Okay. And then what did you do after that? Who are
23 you -- who did you get employed by?

24 A Well, I went back to Mathu Rajan, who I've been working
25 with since, you know, on and off since 2008, mostly on, and

1 said clearly there's nothing for me to do at Stream, you
2 know, what can I do now as a -- as a full-time guy at VSI to
3 help with operations?

4 Q Did you have interactions with VSI between March of
5 2024 and September of 2024.

6 A Well, sure. I've, you know, I've known Mathu Rajan for
7 a long time, and he would make me aware of what VSI was
8 trying to do to, you know, help with Stream. And I was
9 following along with all the, you know, all of the Court
10 activities and things like that.

11 Q Okay. Let's go ahead -- you talked about expenses
12 between January and March. Okay? So before the Trustee came
13 on board, we talked about this whole subscription agreements
14 and the whole process, right, where VSI would ask -- Stream
15 would ask VSI, all that stuff that we talked over.

16 A Okay.

17 Q Was any of that procedure going on after Mr. Homony was
18 appointed?

19 A Not that I'm aware of. No.

20 Q So not that -- you're not aware of Mr. Homony ever
21 saying, hey. Can I give VSI equity for this money?

22 A Not that I'm aware of. No.

23 Q Are you aware of VSI ever saying, you know, let's do
24 this equity thing? Did they ever say that?

25 A Not that I'm aware of, no. It usually would have been

1 prompted by Stream issuing an expense thing, but I don't
2 believe Suby Joseph was ever directed to do that.

3 Q Okay. Let me go back to -- why did -- why did -- so if
4 all the stock purchase and all that had ended before the
5 Trustee got appointed, why was VSI funding Stream?

6 A Well, if Stream is dissolved, then everything that we
7 work to build is lost. So VSI's goal was to save Stream and
8 enable it to reorganize through the bankruptcy. And when the
9 Trustee was appointed, clearly, there was -- it's just a
10 different situation at that point, you know.

11 So we wanted to make sure that the institutional
12 knowledge was retained. The Trustee clearly had a need to
13 get all the knowledge about what happened on the fundraising
14 to explore the conversion. He needed to know about the
15 licensing obligations. He needed to know about the location
16 of the assets and what they were and where they were. You
17 know, he needed to know about the customer relationships and
18 that sort of thing.

19 Q Got you. Okay. And then something just came to my
20 mind. You mentioned like a later plan letter of funds. Did
21 VSI submit a plan at some point? I know you said there's a
22 plan sponsor thing back in 2023. Was there a later document?

23 A Yeah. VSI did submit its own plan, proposed plan of
24 reorganization, shortly before the sale. I don't remember
25 the -- when that was filed.

1 Q Would you read that plan? I think a disclosure
2 statement was probably followed with it. Would you read
3 that?

4 A I'm sure that I did, but there was so much going on
5 with the, you know, the impending sale that I don't know that
6 I can speak much to that.

7 Q I see. Yeah. I mean, do you have any idea if VSI had
8 an administrative claim listed in the disclosure statement?

9 MR. COREN: Sorry. Can I hear that? I'm having a
10 tough time hearing you.

11 BY MR. SWICK:

12 Q If you write a disclosure statement, I'm asking if you
13 recall whether or not Stream or VSI alleged an administrative
14 claim in that disclosure statement.

15 A I don't recall whether there was one or not.

16 Q Okay. What I do know -- well, never mind. It's fine.
17 All right.

18 MR. SWICK: No more questions, Your Honor, for
19 this witness. Thank you for your patience with the leading
20 questions.

21 THE COURT: Mr. Robertson, we've been going about
22 an hour. Are you okay to continue?

23 THE WITNESS: I'm totally great. I got to fly
24 home at 10 o'clock, so I'm hoping that --

25 THE COURT: I don't think Mr. Coren is going to go

1 till 10 o'clock. No worries.

2 MR. COREN: No, but I was going to request five
3 minutes.

4 THE COURT: That's fine. You want to do that.
5 Okay. That's fine.

6 THE WITNESS: I'm okay.

7 THE COURT: You can stand down, Mr. Robertson,
8 during the break, you're not to discuss your testimony with
9 anyone.

10 THE WITNESS: Okay. If it's only five minutes,
11 can I sit in the comfy chair?

12 THE COURT: You can.

13 MR. COREN: I may need eight, but let's shoot for
14 five.

15 THE COURT: All right, we'll come back at 4:50.

16 (Off the record at 4:41 p.m.)

17 (On the record at 4:53 p.m.)

18 THE COURT: Please be seated.

19 MR. SWICK: If I may, Your Honor.

20 THE COURT: Yeah.

21 (Mr. Swick not near microphone)

22 THE COURT: Hang on. I can't -- I can't hear you
23 both. So will you think you're finished with Mr. Robertson
24 tonight or no?

25 MR. SWICK: No, Judge, I wouldn't come close.

1 THE COURT: Okay.

2 MR. SWICK: His testimony was a lot longer than I
3 thought. Covered a lot of areas. I'm going to be with --

4 THE COURT: Okay. Well, the difficulty -- the
5 difficulty that at least that I see with that is we can try
6 and look for some available dates. But he's under oath, and
7 he won't be able to speak to anybody for however long this
8 goes. So is there a way that you can finish him tomorrow?

9 MR. SWICK: Yes.

10 THE COURT: Oh, okay.

11 MR. SWICK: If we wanted to do that --

12 THE COURT: Okay. I'm a little bit worried about
13 having, you know -- well, he's got a flight tonight.

14 MR. SWICK: Are you on Southwest?

15 THE WITNESS: No. But if I'm going to have to fly
16 back on another time, then what's the difference in changing
17 a flight?

18 THE COURT: You can stay --

19 MR. SWICK: Look, I'm okay with it either way. I
20 can finish him by noon tomorrow, certainly, or I -- you know,
21 Your Honor just admonishes everybody, don't talk, that's
22 enough for me.

23 THE COURT: Go ahead, Mr. Swick. I didn't hear
24 exactly what you said. I'm sorry. But my suggestion would
25 be we do Mr. -- Ms. Shaw (phonetic) has a little surgery

1 tomorrow morning, so she can't be here. Get him in a -- can
2 you stay another night, or do you --

3 THE WITNESS: No.

4 THE COURT: Did you say you'd rather fly back than
5 a --

6 THE WITNESS: No. I said, I guess, while I'm
7 here, I'd rather just stay another night and wrap up in the
8 morning. I'll just change my flight to tomorrow, whatever
9 that entails, rather than go through the hassle of the cross
10 country flight again.

11 THE COURT: I'm just trying to be respectful of
12 you know? I don't want to have any not that not that I have
13 any reason to think otherwise. Yeah. But it's very
14 difficult, right, when you have a person who is obviously
15 involved in the business and your client and you're saying I
16 can't talk to him for God knows how long. So I'm just trying
17 to be thoughtful about that.

18 I'm happy to take a witness out of order. Right?
19 And you'll just be under an admonition that you can't discuss
20 your testimony with anyone.

21 (Overlapping voices)

22 THE WITNESS: Overnight then for two weeks or
23 whatever it is.

24 THE COURT: Right. That's what I'm a little
25 bit -- and my schedule is I mean, unless you want to do it

1 Wednesday or you know, or someday really limited next week,
2 then I'm gone for two weeks, unfortunately. Okay.

3 MR. SWICK: Well, let's -- if you don't mind,
4 we'll do Raf, him tomorrow morning, and you won't talk to me
5 or to Matthew or anybody tonight. Okay. All right.

6 THE COURT: So, Mr. Robertson, I appreciate, you
7 being here, but I am going to ask you -- give you the
8 instruction not to speak with anyone about your testimony --

9 THE WITNESS: Understood

10 THE COURT: -- prior to we come back tomorrow, and
11 you'll remain under oath in the morning. Thank you. All
12 right. You're going to be done in 30 minutes?

13 MALE VOICE: Five minutes, I heard?

14 MR. SWICK: Five minutes. Five, ten minutes.
15 Yeah. There's not much.

16 MALE VOICE: And thank you, Your Honor. I have
17 the emergency root canal and a chipped tooth. So as much as
18 that's better than this --

19 THE COURT: I was going to say, which sounds more
20 enjoyable to you.

21 (Witness sworn)

22 THE WITNESS: My name is Rafael Zahralddin, and
23 it's spelled R-A-F-A-E-L, last name, Z-A-H-R-A-L-D-D-I-N.

24 THE CLERK: And can you please state your address
25 for the record?

1 THE WITNESS: 601 Old Kennett Road, Wilmington,
2 Delaware 19807 is my home address. Would you like the
3 business address too?

4 THE CLERK: (Inaudible).

5 THE WITNESS: Okay.

6 DIRECT EXAMINATION

7 BY MR. SWICK:

8 Q Good evening. Good evening now. Yes. All right. Mr.
9 Zahralddin, remind me one more time how to pronounce --

10 A Zahralddin.

11 Q Zahralddin. I'm going to I'm going to --

12 A It's like horseshoe. You get near the post, we'll be
13 okay.

14 Q Okay. Zahralddin. Known you for 20 years through the
15 AVI (phonetic) list. I still can't do it. Okay. Should be
16 a witness binder somewhere. It's Exhibit No. 21.

17 A Okay. Same binder that you were just using? Okay.

18 Q Let's start by just a little bit of background. Like,
19 what do you do for a living?

20 A I'm a lawyer, primarily bankruptcy commercial
21 litigation, and I was Debtor's counsel of record along with
22 few other lawyers from Lewis Brisbois Bisgaard & Smith here
23 in this case.

24 Q Okay. So you're very familiar with the Debtor, VSI,
25 Mathu Rajon, and everything that's gone on in this case.

1 A Yes. I can say I've reached my Stream saturation point
2 several months ago.

3 Q All right. Good. Well, I'm still -- I'm still there.
4 So, you know, here we are. All right. So, obviously so,
5 you're aware that a Chapter 11 Trustee was appointed in the
6 case?

7 A I am.

8 Q Okay. After he was appointed, what was your role?
9 What did you -- what's kind of -- what was your -- what was
10 your role?

11 A Well, I saw my role and so my firm's is trying to be a
12 facilitator. We had someone new coming into the case, very
13 complex case. We spoke to Mr. Vagnoni. We spoke to Mr.
14 George, the other folks from Obermayer, a little bit with Mr.
15 Coren, but primarily in the beginning, we wanted to kind of
16 coordinate things.

17 We knew there was a complicated legal proceeding
18 underneath all of this prior to state court, and there had
19 been -- I mean, we had a TRO, and even though the Third
20 Circuit says you don't need evidentiary hearings for TRO, I
21 would estimate that we had over eight days of hearings just
22 dealing with the TRO, and then we had to bifurcate some of
23 the other issues that were coming up because this was a long
24 and difficult litigation.

25 Q I use the term chaos, but yeah, your description --

1 A I believe that's Vice Chancellor Laster's (phonetic)
2 term.

3 Q Yeah.

4 A He called it litigation chaos, and it was endemic to
5 the fact that you had two parties, both set up with insiders
6 who desperately wanted the technology because Mr. Stastney
7 was the CFO. Everyone keeps forgetting that he was a board
8 member, a vice chair of the board, and a CFO.

9 Q All right. So before Mr. Homony's appointment, the
10 Debtor -- tell me about the Debtor's operations.

11 A Well, we had tried over time to bring over employees
12 and to effectuate two purchase orders. We had been working
13 with the folks at VSI who we had a lot of investors, a lot
14 of -- I would call it a true venture capital investment
15 because you had folks that were industry folks who also were
16 bringing in money. So their board was a combination of money
17 and expertise.

18 And probably more so than before under Stream because
19 Stream was really more of a combination of angels and super
20 angels who didn't have a lot of industry expertise. They
21 were financiers. So we've been working with them. We tried
22 off -- out of the gate to -- we felt that, well, at least
23 with some folks with some bankruptcy experience, they would
24 be respecting of the stay.

25 The first bankruptcy had a problem with it in the sense

1 that there had been a preliminary injunction in place, and
2 Judge Owens believed or felt that, you know what, this needs
3 to play out there. Now whether I agree or disagree with
4 that, Judge Wall certainly disagreed that there were several
5 cases that he had where he said no. Chancery does their gig.
6 We do our gig, but that was really Judge Owens' issue.

7 And she even said even after the involuntary was filed,
8 I mean, she was, I think, upset because she felt it was, you
9 know, it's just -- I just saw you guys couple weeks ago. Now
10 there's more people in here. But she even said, look.
11 Let this play out. Once you're done with Chancery, you can
12 come back here.

13 And then what ended up happening in this case is we
14 felt, okay, there's already been a determination by the
15 highest court in the State of Delaware. The assets are
16 supposed to come back. Combined with the automatic stay,
17 there shouldn't be any more of this nonsense.

18 And so we struggled with that issue because the
19 litigation button didn't get turned off on the other side.
20 We tried to bring a couple of motions into play. One to deal
21 with, just -- again and Judge Coleman even said, look. She
22 told counsel to the Hawk parties, just because he asked for
23 permission, meaning me, Debtor's counsel, doesn't mean
24 there's something he's doing that's wrong. You always, in
25 the excess of caution, try to get approval from the Court

1 because the consequences could be different.

2 So we tried to get employees over. We tried to get the
3 financing done through the equity conversions for the dual
4 reasons already discussed on the record of effectuating the
5 conversion agreements, but also because we were told by the
6 Hawk parties that any sort of motion for DIP financing that
7 was unsecured, unless it was unsecured, was going to get a
8 full on assault, and we're going to be challenged. We had to
9 kind of pick our poison as to which litigation we were going
10 to have to deal with.

11 Q Okay.

12 A Hold on. Then the last piece of it was that some of
13 these motions, particularly the stay enforcement and the --
14 which had to go into a mediation -- and the employee motion
15 inexplicably got put into something called the abeyance,
16 which I have in 30 years never encountered. And I believe it
17 was a product of Ms. Godfrey's retirement.

18 She and the judge kind of put things onto the side.
19 Ms. Godfrey was kind of out the door, and it was months
20 probably -- if we filed in the spring, it was early fall
21 before we actually had court time to hear stay relief -- I
22 mean, sorry, stay enforcement employee and the way we're
23 going to finance the case and get in front of her.

24 And she finally said, look. I think this is ordinary
25 course. If you want me to say it's ordinary course, and I

1 said, yes, ma'am. Tell me it's ordinary course. In the
2 interim, though, we also filed the plan and disclosure
3 statement.

4 Q And so you're -- but you are familiar, too, with how
5 the Debtor was being funded?

6 A Yes.

7 Q Okay. How did that happen?

8 A The Debtor was being funded --

9 (Overlapping voices)

10 A -- just through subscription agreements. And we had
11 Bennett Fisher who is probably six or seven years elder in
12 Texas, handled all of our operating reports. They had a
13 discrepancy. That's one of the things that led to the --
14 they're called, you know, the Judge Coleman's opinion was --
15 and the fact that Mr. Rajan had leukemia during this time
16 period.

17 So there was a funding mechanism through subscription
18 agreements, and that's the way things are getting funded.
19 They were reflected, but on the wrong spot of our operating
20 reports, which led to the 2004, and then we corrected them
21 and we filed them.

22 Q Can you take a look at that exhibit now, Exhibit 21?

23 A Yes. I'm familiar with what -- I looked at it earlier.

24 Q What is this document?

25 A It's just an email request for Mr. Homony, and he asked

1 about Stream TV funding. I believe he was trying to figure
2 out, if you look at the other pieces, his original email
3 asked, is there a formal funding mechanism currently taking
4 place with BCI? Seems we'll need funds to cover upcoming
5 costs, including the 100K owed to BMC, which in this case is
6 the claims and noticing agent.

7 And I wrote, yes. There is a subscription agreement
8 open for shares. We understand the shares are likely to be
9 extinguished. The shares are key to pushing the conversion
10 agreements in the surplus. Let me find out where things are,
11 I'll revert back to you. And this is, again, January 17th.
12 And I'm not sure if Leslie Baskin had come in yet for VSI or
13 not, but I had frequently received calls from Ms., you know,
14 Obermayer and from and from Mr. Homony asking for help to
15 kind of piece things together.

16 And we'd packaged some things together that might be
17 useful for them, you know, the issues with the employment
18 agreement and violations of that and stuff with the TRO. But
19 we also tried to get over things more practical like this, so
20 they knew they could email me. And we spent a lot of time
21 trying to help.

22 Q But you say here, let me find out where things are, and
23 I will revert back to you. Did you know where the
24 subscription agreements and all that stuff --

25 A No. I would have had to call Mr. Rink, who was really

1 the gatekeeper at VSI with that. He worked with a couple
2 other people on a -- we had a -- at my insistence, I told VSI
3 they had to get counsel. They had originally had Akerman
4 help them during the plan process, have a separate board
5 committee to deal with the plan writing process and
6 negotiating process so that Mr. Rajan and whatever baggage he
7 had would not be getting in the way of the -- of the
8 restructuring and anything we filed.

9 Fair or unfair, whatever that was, it was an issue, and
10 we diffused it by putting in this committee. And that is
11 where I became familiar with how we were going to structure
12 this and we gave it some effort that way.

13 Q And you said the shares are key to pushing the
14 conversion agreements into surplus. What did you mean by
15 that?

16 A Well, we had been -- again, I was no longer Debtor's
17 counsel. I'm not receiving information about Stream.

18 Q No man's land.

19 A Yeah. I'm in no man's land, but I am trying to help.
20 So I was really just making a phone call to find out where
21 things were.

22 Q Did you ever find out where things are and get back to
23 Mr. Homony?

24 A If I did, I looked for -- I looked for emails. I did
25 read the pleadings. I don't know if other folks are able to

1 find emails. But more than likely, I probably called Mr.
2 Homony and, you know, told him whatever Dan had told me. And
3 at that point, I just don't -- I just don't know.

4 I mean, it just -- I wasn't counsel at that point.

5 Q Okay. So you don't -- you just don't remember?

6 A No.

7 Q You don't remember --

8 A No. I'm positive I would have sent him to Dan, to Dan
9 Rink.

10 Q Okay. But you were not aware of actually the final
11 status of these -- the status at that time.

12 A Yeah. So I'd had enough unpaid bills at that point
13 too.

14 Q Yeah. I understand that. Okay. We're going to --
15 we're going to go really quick here.

16 A Okay.

17 Q Earlier testimonies, there's this meeting on March 7th
18 or in the middle of March. They talked about, and you
19 think -- you said that you were -- the witness before said
20 that you attended this meeting with Mr. Homony. Do you
21 recall that?

22 A I do.

23 Q Okay. What was that? Just give me a quick summary of
24 that meeting.

25 A I was literally begged by Mr. Vagnoni to please come to

1 the meeting because I had lots of information. Thought it'd
2 be very helpful. A meeting that started with Mr. Homony
3 sitting down. I think Mr. Coren was on Zoom. He wasn't
4 present, or maybe he was a little bit lagging in time.

5 But Mr. George, Mr. Vagnoni, Mr. Homony was there, Mr.
6 Rajan, Ms. Maneen. First thing Mr. Homony said was, you guys
7 have been victim of a civil conspiracy. Okay.

8 And then we went to talk about what had happened. The
9 fact that Mr. Coren's role would be to be someone who was
10 special counsel for the purpose of lender liability, and we
11 had lenders here who may have overstepped.

12 They did have the benefit of a lot of the information
13 we had forwarded over and over again to them, you know,
14 after, you know, different conversations to facilitate
15 things. And then we did a demonstration of the TV, showed
16 the technology. I mean, we -- I mean, I was -- I don't know
17 anything about the technology TV. I've got as much, you
18 know, knowledge as just seeing it visually because I'm not an
19 engineer.

20 Q Must be nice. Someone's seen it.

21 A But after that, Mr. Homony said, look. What can we do
22 to help here? It was an amicable meeting. There was some
23 discussion of the risks attendant with the other parties in
24 the litigation. But at the end of the meeting, of course,
25 Mr. Coren wasn't there to hear this because he had been on

1 TV, so to speak. Mr. Homony and Mr. Vagnoni and Mr. George
2 said, look, we're going to do everything we can to try to get
3 you paid. Thank you for all your help. And then I went off
4 on my way.

5 MR. SWICK: No further questions, Your Honor.

6 THE COURT: Mr. Coren?

7 CROSS EXAMINATION

8 BY MR. COREN:

9 Q You mentioned a prior bankruptcy in Delaware, and it
10 was the judge was Judge Karen Owens. Correct?

11 A I did.

12 Q And you mentioned she made some comment to you about
13 come back at some other point in time. Do you recall that
14 testimony?

15 A I did.

16 Q Yeah. Well, that -- she dismissed that bankruptcy as a
17 bad faith filing. Did she not?

18 A Yes. Bad faith filing has a different nomenclature
19 than you're trying to imply.

20 Q I didn't imply anything. The question is, isn't it
21 true that the Bankruptcy Court in Delaware dismissed the
22 voluntary bankruptcy that you were involved in as a bad faith
23 filing? Yes or no?

24 A Involved in? Sure. I was involved in.

25 Q Yes or no?

1 A I just said yes. I was involved in. Not as Debtor's
2 counsel, though.

3 Q And then, shortly thereafter, there was another
4 involuntary that you were involved.

5 A Nope. Was not involved in. I simply showed up to give
6 testimony as to the funding piece of it because I represented
7 the funder.

8 Q Who'd you represent?

9 A VTI. And their underlying funder, which was not Mr.
10 Rajan.

11 Q And who are the parties to that involuntary -- who
12 filed the involuntary?

13 A Rembrandt and two members of the Creditors Committee.

14 Q And that was dismissed as a bad faith filing. Correct?

15 A Yes. That's the nomenclature.

16 Q That's not a good thing to be dismissed for bad faith,
17 is it? You call it nomenclature. It's pretty bad, isn't it?

18 A There's a variety of different reasons, but they do not
19 connote fraud, which is what you have stated in papers
20 before, Mr. Coren.

21 Q So that -- how many matters you've been involved in
22 have been dismissed as bad faith filings?

23 A Involved in? Two in my life.

24 Q We agree it's not a good thing.

25 A No. It's not a good thing to have an involuntary. But

1 for the reasons that were stated before --

2 Q You've answered my question, sir.

3 A Well, that's fine. Thank you for acknowledging I was
4 finished with my answer.

5 Q Now, you said the Debtor was funded through
6 subscription agreements. Do you recall that testimony?

7 A Yes.

8 Q And what that meant is that there were subscription
9 agreements, and VSI made payments, and in return received
10 Stream shares. Correct?

11 A Yes. Correct.

12 Q And that funding arrangement was never approved by the
13 Bankruptcy Court. Correct?

14 A Incorrect.

15 Q Can you point to an order approving that arrangement?

16 A The judge indicated that that was an ordinary course
17 action that did not require.

18 Q Sir --

19 A There is none.

20 THE COURT: I think he was answering your
21 question, but you can ask a follow-up question. Just let him
22 complete his answer first, please.

23 THE WITNESS: Can you repeat the question, Mr.
24 Coren?

25 BY MR. COREN:

1 Q Can you point to any order in which the Bankruptcy
2 Court held that that funding arrangement was ordinary course
3 and okay? Any order?

4 A The judge -- no. There's no order.

5 Q And as a matter of fact, you read the judge's opinion
6 removing Mr. Rajan on an appointing the Trustee. You read it
7 carefully, didn't you?

8 A I did.

9 Q And you recall that court was critical of that funding
10 arrangement in that opinion?

11 A She may have been.

12 Q You don't remember?

13 A I don't remember because I don't have it in front of
14 me. Would you like to point it out for me? Because I can
15 agree with you if it's in there. You can find it.

16 Q Now, as a matter of fact, in December of 2023, the U.S.
17 Trustee was concerned about the funding arrangement and
18 wanted information under oath. Correct?

19 A Incorrect. You want me to be exact? That's incorrect.

20 Q Did the U.S. Trustee file a request for a 2004
21 examination relating to the funding arrangement?

22 A Not just related to the funding arrangement.

23 Q Relating to the funding arrangement and other matters?

24 A Yes.

25 Q And isn't it correct that in December of 2023, amended

1 operating reports were filed for every period during the
2 bankruptcy. Correct?

3 A Yes.

4 Q And in those amended operating reports filed in
5 December of 2023, the Debtor disclosed the funding
6 arrangement, the stock purchase agreements, and how much was
7 paid in accordance with those stock purchase agreements.

8 A Incorrect.

9 MR. THOMPSON: Objection; failure to lay a
10 foundation.

11 THE WITNESS: Incorrect.

12 BY MR. COREN:

13 Q What was incorrect about that?

14 A Your statement was incorrect. You want to repeat it?
15 You can repeat it, and I'll answer.

16 Q Yeah. Did the amended operating reports filed in
17 December of 2023 enclose the letters identifying the amount
18 of expenses paid and the stock to be issued in return? Did
19 they do that?

20 A They were in prior operating reports. They were in the
21 wrong place. They were in the wrong place. That was the
22 entire rationale for the 2004.

23 Q Is it correct that the letters that we're referring to,
24 which are in the book, I believe there are perhaps nine of
25 them that were filed in December of 2023, each one is a

1 letter from VSI identifying how much was spent. It had a
2 spreadsheet attached to it and told how much Stream shares it
3 was entitled to. Is that true?

4 A You'd have to show it to me because that responsibility
5 was given to Bennett Fisher in my Texas office.

6 Q And you didn't review it before it was filed?

7 A It was signed by -- it was signed by counsel of record
8 Bennett Fisher, who was pro hac'd in and given that
9 responsibility because he has a lower rate than me, and
10 therefore, it was more appropriate to finish up the operating
11 reports.

12 Q Did you review them, yes or no, before they were filed?

13 A I don't believe that I was responsible or reviewed them
14 before I filed. There were two partners looking at those at
15 that time. Myself and Vince Alexander were on top of the
16 case. Mr. Alexander is the head of our bankruptcy
17 department. But I did review them before the 2004 exam.

18 Q Take a look at VSI Exhibit 21 that you were asked
19 about.

20 A Yes. 21? The emails?

21 Q Yes.

22 A Okay.

23 Q You told the Trustee -- he asked you whether or not
24 there was a funding mechanism currently in place with VSI.

25 A Yes. I responded yes.

1 Q Right. And your response has been read into the
2 record. You wrote, yes. There is a subscription agreement
3 open for shares. They understand the shares are likely to be
4 extinguished. The shares are key to pushing the conversion
5 agreements into surplus.

6 A Correct.

7 Q And there you were referring to the talk relationship
8 and the effort to convert their security interest into
9 equity. Correct?

10 A Correct. There were three -- there were three
11 conversion parties, Hawk, SLS and then a subsidiary of a
12 larger company, Hawk and SLS reneged on their
13 responsibilities. I think it was Qualcomm. I think it was
14 Qualcomm or a subsidiary of Qualcomm. They fully converted.

15 Q Were you aware of all the subscription agreements that
16 existed?

17 A Was I aware of them? Again, I can't be aware of
18 everything in it. I knew that they existed. I knew that we
19 had certain mechanisms. I'm not sure if I was tracking them
20 because that was more appropriate for Bennett, for Mr. Fisher
21 to do. But, yes, I was aware they were out there, which is
22 why my email says I need to go and check on them. And the
23 person to check on them with would be Mr. Rink.

24 Q Sir, did you ever read any of the subscription
25 agreements?

1 A Yes. I did look at a couple subscription agreements.

2 Q How many were entered into post-petition?

3 A I'd have to look at the record. I mean, I would
4 imagine there may have been two or three possibly.

5 Q How about four? Is that possible?

6 A Possible. Again, I don't have the record in front of
7 me.

8 Q Now, can we agree that you never sent an email back to
9 Mr. Homony to tell him that there was no longer a funding
10 arrangement in place, meaning pay expenses and return for
11 shares. You never did that. Correct?

12 A I have no idea, but I looked for one and could not find
13 one. So that's what I'm telling you. I looked for one. I
14 couldn't find one. So my assumption is I did not send
15 another email.

16 Q Do you have any memory of sending one that you now
17 can't find?

18 A No. I do not have a memory of that email. I read and
19 send thousands of emails on a daily basis.

20 Q Are you telling this court under oath that you called
21 up Mr. Homony and you told him that that funding arrangement
22 was no longer in place?

23 MR. THOMPSON: Objection; mischaracterizes his
24 testimony.

25 MR. COREN: It doesn't just characterize the

1 testimony.

2 THE WITNESS: Yeah. Completely.

3 BY MR. COREN:

4 Q Well, I thought your testimony was a little wishy washy
5 on the subject.

6 MR. THOMPSON: Objection. Argumentative.

7 THE COURT: Okay. I mean, I agree. He's
8 testified. I have his testimony here. I understand what he
9 said.

10 BY MR. COREN:

11 Q Okay. Now, do you have a memory of addressing the
12 specific issue that you told Mr. Homony you would follow-up
13 on? Do you have a memory of discussing it with Mr. Rink?
14 Yes or no?

15 A Yes.

16 Q Do you have any writings back and forth with Mr. Rink
17 on the subject that you could find?

18 A No. No. I would have normally, with any one of these
19 issues, I would have called -- if I knew it was -- if I
20 knew --

21 Q I don't want to know what you would have done. I want
22 to know what you remember doing. Do you remember having a
23 discussion --

24 A I remember with any question, I would go to Nicole
25 Maneen first because she was the designated point person,

1 number one. Number two, if I knew someone had specific
2 responsibility, I would shortcut that by calling the person
3 saying, like Mr. Rink, give Bill a call. There was -- I
4 mean, this was the -- it was a friendly mechanism. I had no
5 obligation to follow-up on any of this, but I was very
6 helpful to the rest of your team over there. Okay?
7 That's -- and that's what I remember. I don't -- I didn't
8 have these specific file. I don't even -- I just don't -- we
9 just don't have them. I don't have a recollection. No.

10 Q You've been monitoring the bankruptcy proceeding
11 because you have a \$3,000,000 claim that the Trustee objected
12 to. Correct?

13 A That the Chapter 11 Trustee objected to. Right? The
14 U.S. Trustee signed a stipulation saying they would not
15 object and they were satisfied with their review. Yes. I'm
16 fully aware of the objection, Mr. Coren.

17 Q My question was you've been monitoring the bankruptcy
18 proceeding, especially since the Chapter 11 Trustee is --

19 A No. Mr. Coren --

20 Q Can I finish the question, please?

21 THE COURT: Let him finish the question.

22 THE WITNESS: Okay. Sorry. I'll let him finish.

23 BY MR. COREN:

24 Q Objected to your fee application.

25 A And I'm going to tell you that no. Jonathan Preziosi,

1 Migna Wang, and Scott Cousins, since you guys have
2 essentially made me a witness, they're the ones monitoring it
3 right now.

4 Q Are you or your firm representing any of the parties in
5 this case right now?

6 A Representing other parties in this case.

7 Q Any of the parties? VSI?

8 A No.

9 Q Rembrandt?

10 A No.

11 Q Let me direct your attention to -- do you have do you
12 have our book of exhibits up there? I'm not sure if it's in
13 their book or not. But --

14 (Background conversation)

15 BY MR. COREN:

16 Q Exhibit 25. Do you do you have that up there, sir?

17 MR. THOMPSON: Steve, could you repeat the
18 exhibit, please?

19 MR. COREN: 25.

20 BY MR. COREN:

21 Q First question is, did you ever read that objection? I
22 guess you have to look at it to answer that question. Was
23 filed on June 18th, 2024, more than six months after the
24 Trustee was appointed.

25 A I don't think I have much familiarity, if any, with

1 this. It may have been something I looked at, but I don't
2 really -- like I said, I don't really look at these on a
3 regular basis. I don't have a recollection of it.

4 Q One way or the other?

5 A One way or the other. Yeah.

6 Q And let me ask you -- and that's fair. I'm not going
7 to take you through it if you're -- if you have no memory of
8 it.

9 A Yeah.

10 Q Did you ever find out after your email communication
11 with the Trustee, did you ever find out the status of the --
12 of the funding arrangement, if any, between VSI and Stream?
13 Did you ever find out?

14 A No. I didn't have -- I don't think I had -- I don't
15 think I pursued it past getting it over into somebody else's
16 hands, and I don't think I had a recollection of whether at
17 what level -- I think that there -- the real question was
18 going to be, was there any money left in an existing
19 agreement? And I did not have the knowledge of that status.

20 Q And you don't know what new counsel -- or strike that.
21 You don't know what counsel for VSI told this court on
22 June 18, 2024, as to the funding arrangement.

23 A No. I just wasn't following it. Apologize.

24 Q Now, you mentioned something about the Trustee having
25 some concern about purchase orders. Do you recall that?

1 A About having concern on the purchase orders. I don't
2 know if I said that.

3 Q Did you ask me about purchase orders?

4 A I think we discussed the purchase orders. Yes.

5 Q Those purchase orders were addressed in the opinion
6 removing Mr. Rajan and appointing the Chapter 11 Trustee. Do
7 you recall that?

8 A I do.

9 Q And there was a serious question raised by the Court as
10 to whether or not those purchase orders were phony. Do you
11 remember that?

12 A Yeah. I believe the opinion past Mr. Homony was
13 investigating the purchase orders.

14 Q You don't recall any suggestion in the opinion as to
15 whether or not those purchase orders were phony?

16 A Well, there wasn't any evidence to suggest that other
17 than --

18 Q My question was, do you remember anything in the
19 opinion that --

20 A I do remember, yes. I do remember a conclusory set of
21 statements, which then led to the fact that that Judge
22 Coleman didn't have enough information and wanted
23 specifically this to be a task for the Chapter 11 Trustee,
24 which is to investigate the purchase order. That is in the
25 opinion. I know that.

1 Q Did you personally investigate the purchase orders?

2 A Yes, I did.

3 Q And who'd you speak with?

4 A I spoke to the CEO, I'm trying to remember his first
5 name now, of Southern Telecom, which purchased both Polaroid
6 and Brookstone out of -- was it Brookstone? You know, the
7 gadget company, out of bankruptcy.

8 We had several -- Ms. Alexander and I had several
9 conversations with them on Zoom because we're in still kind
10 of pandemic.

11 Q Who did you speak to?

12 MR. THOMPSON: Objection, Your Honor.

13 THE COURT: He's answering your question.

14 MR. SWICK: Well, it's going a lot farther than
15 giving --

16 MR. THOMPSON: Excuse me, Your Honor. He can't
17 dictate his testimony.

18 THE COURT: He's answering your question.

19 THE WITNESS: Yes. Are you going to ask me who we
20 talked to? CEO, I believe we also had one of the head of
21 marketing. The company, Southern Telecom, they have offices
22 in Brooklyn, and they had originally started with
23 manufacturing in Asia of plasticware, things of that nature.

24 With the acquisitions during the bankruptcy,
25 they're now fully electronics, which is kind of the natural

1 progression for some companies that do distribution out of
2 Chinese manufacturing. And they have offices in Brooklyn and
3 Bentonville next to Papa Walmart. So they have joint
4 marketing with Target and with Walmart.

5 And we got on the phone. We discussed TVs. They
6 were -- they were begging me when will the Bankruptcy Court
7 do something. And I said, well, Christmas isn't -- I mean,
8 that's too short. And they said, the heck with Christmas.
9 Super Bowl is when we want to have X number of TVs out.

10 So this was a specialty TV that was right up their
11 alley. They wanted to get that done, and, yes, I spoke to
12 them. Again, we didn't go up and meet them because it was
13 still kind of pandemic-y, but we had two different
14 conversations. One with, well, by myself, one with Vince
15 Alexander from my office who's the head of our bankruptcy
16 group at that time.

17 The only person I didn't speak to because of the
18 time difference, but had multiple communications with Systar
19 because we needed to get all kinds of information from them
20 through the mediation with Judge Mayer because the secured
21 creditors during the mediation, they were asking for things
22 like insurance and, you know, you know, how are you going to
23 get this equipment from point A to point B because Systar had
24 offered to house the equipment for free, and they had gotten
25 a warehouse for that purpose so that they could also start --

1 put fulfilling some of the time slots for the bonding
2 machine.

3 So, yes, I had extensive conversations with one
4 group and then reams of communications with the other.
5 So I had not -- and Mr. Caponi (phonetic) tried to challenge
6 that here in court and failed on that issue. So I did speak
7 to those purchase orders.

8 Now, I don't know what anyone else has done --

9 MR. SWICK: Your Honor, I think he's done
10 answering my question.

11 THE COURT: Well, I think he's done answering the
12 question. Got it. Answered that question.

13 BY MR. COREN:

14 Q Whose name were the purchase orders in? Who were they
15 to benefit of?

16 A Well, they were -- if you ask me benefit of Stream and
17 VSI.

18 Q They were in the name of VSI, were they not?

19 A That that's not the question you asked me, Mr. Coren.
20 Goose has got to do the same thing as the gander here. You
21 asked me who are their benefit for. They specifically
22 mentioned Stream. Third party beneficiaries are a construct
23 in contract law.
24 It was a distributorship agreement. You're distributing for
25 someone. So I answered your question.

1 Q Okay. Let's talk about that distributorship agreement.

2 That's Exhibit Trustee 30 in your book.

3 A Yes. Okay.

4 Q Why don't you pull that out?

5 A Is it in in your book or my book?

6 Q My book. The Trustee. Should be right up there. Is
7 that the exclusive distribution agreement you're referring
8 to?

9 A Yeah. I believe it is, but we did have a final that we
10 attached as an exhibit and supplement to the plan and
11 disclosure statement that we filed.

12 Q Now this, exclusive distribution agreement is dated
13 March 31st, 2023. Correct?

14 A Yes.

15 Q And that's post-petition. Correct?

16 A Correct.

17 Q Can you point to any court order approving this
18 agreement? Yes or no?

19 A No.

20 Q Did you submit this agreement and request approval of
21 the Bankruptcy Court? Yes or no?

22 A Yes.

23 Q When?

24 A When we filed our plan of disclosure statement.

25 Q When.

1 A There's there -- just I'd say the judge asked us to
2 please do something other than litigation in the case. So we
3 worked hard to make sure we had a plan and disclosure
4 statement, and we added this in our settlement with Rembrandt
5 as part of a package because our thought process was the way
6 to get this done, especially with the two purchase orders,
7 was to have an operational plan, one where we were able to
8 pay the secured creditors back with money from operations.

9 If indeed the secured creditors, as they promised me at
10 that time, just wanted to get out of the way and get paid,
11 then it became, no. We just want to get paid in a lump sum.
12 Then it went back to, no. We just want the assets.

13 So as part of this process, just like a lot of other
14 contracts that are signed, that are plan support agreements
15 or otherwise, they get approved at some point, but you want
16 to try to amass consensus to get to a plan. It's a basic
17 part of reorganization.

18 Q Are you aware there are no prices in this agreement?

19 A As I stated, we were putting together the pieces for a
20 plan and disclosure statement so that we could --

21 Q. It's really confusing. Do you know whether there's
22 prices --

23 A I'd have to look at it. I mean, I'm sure there's not
24 or he wouldn't be asking me.

25 Q Well, turn to Exhibit A, page 15 of 19, I think answers

1 the question.

2 A So in this particular one, and I have no idea whether
3 this was attached to our plan or not. Okay?

4 Q You still haven't looked at it yet to answer.

5 A I'm trying to get to it. You said it's Exhibit A?

6 Q Yes, sir.

7 A Okay.

8 Q Page 15 of 19.

9 A Okay. Well, that just gives you products. Territory.
10 Facts. Okay. So I'm not sure if -- because I'm doing this
11 from memory. I don't know if the pricing is somewhere else.
12 It does reference 4.2 price says it's in sale purchase. It
13 says the initial prices are listed in Exhibit A and it's not
14 in there. So either there was a reference in the purchase
15 orders or there was another document. I can't explain to you
16 why that was there.

17 Q So there are no products listed in the agreement and no
18 prices listed in the post-petition agreement. Correct?

19 A Except for we had two purchase orders that had
20 specific --

21 Q That's yes or no.

22 A I think I answered it already.

23 THE COURT: That's not right because I can see
24 that there's product listed. There's no pricing.

25 THE WITNESS: Yeah. There's no pricing.

1 THE COURT: I got it. I get the point. You know,
2 I'm trying to be respectful folks of my staff who I've
3 already, you know we've gone way longer than I thought we
4 have and so --

5 THE WITNESS: That's just because Mr. Coren likes
6 me. But we'll wait for the rest of those questions.

7 MR. COREN: Give me one minute.

8 THE COURT: Okay.

9 MR. COREN: Okay. Nothing further.

10 THE COURT: Okay. Any redirect?

11 MR. THOMPSON: Your Honor, only briefly, and I
12 promise to be very brief and respect of your staff and Your
13 Honor. First and I'd ask, the witness to please be as brief
14 as possible in answering these questions.

15 REDIRECT EXAMINATION

16 BY MR. THOMPSON:

17 Q Mr. Coren raised with you the ordinary course order
18 that was received with respect to payments and the
19 application to pay wages. Would you care to elaborate where
20 Mr. Coren did not allow you to do so?

21 A The judge essentially threw up her hand to say, do you
22 want me to say this is ordinary? And I said I would because
23 we're lacking in court time. She then had her courtroom
24 deputy, Ms. Godfrey, call me, and she told me that the three
25 things were up that day, which I believe was the employee --

1 other three things, there was employee and the -- and the
2 equity mechanism. She said, we're going to take those off
3 because those are ordinary course. That's the instruction I
4 got from the Court.

5 Q Thank you. Second, do you recall the questions from
6 Mr. Coren with respect to the so-called bad case bad faith
7 filing dismissals.

8 A Yeah.

9 Q You didn't get an opportunity to finish your answer,
10 did you?

11 A Yes. Bad faith does not mean fraud. I mean, it's a
12 legal question, but it's -- bad faith just means that there
13 may not have been a FOIA filed. There are variety of
14 different reasons that you have a bad faith ruling.

15 Q Thank you.

16 A That there's an existing litigation that's being -- I
17 mean, there's a million different reasons.

18 Q Thank you. Do you recall testimony with respect to the
19 early March? I think it was the March 7th meeting that you
20 attended with the Trustee and his counsel.

21 A Yeah.

22 Q I think you testified words to the effect of Mr. Homony
23 at the start of the meeting opened with an explanation about
24 Stream TV and its principals being the, quote, victims of a
25 civil conspiracy. Is that correct?

1 A That's correct. That's correct.

2 Q You heard that for yourself?

3 A I did. Mr. Homony was being very cooperative. He was
4 trying to sort out this issue that was going on, and he had
5 had the benefit of his counsel and all the materials we'd
6 sent over. He'd also had the benefit of the opinion and
7 everything else.

8 So, you know, we took that as -- I took it as he was
9 trying to help, and it was a positive, along with all the
10 other calls I had from Mr. Vagnoni and other folks that they
11 were trying to make a go of this.

12 Q Were -- was anyone else in the room, expressing similar
13 sentiments with respect to what had happened in the case of
14 this --

15 A I think Mr. George and Mr. Coren were worried about the
16 litigation aspects of it. I think Mr. Homony was trying to
17 figure out how he could make this work because I think it was
18 an operational issue, and Mr. Homony maybe was more familiar
19 with liquidations. I mean, there wasn't -- it was not a
20 unfriendly room.

21 Q You recall the testimony that you gave with respect to
22 Exhibit 21 regarding your emails with the Trustee and the so
23 called current subscription agreement?

24 A Yeah.

25 Q Is it your understanding that the current subscription

1 agreement stayed in place for purposes of the now newly
2 appointed Chapter 11 Trust?

3 MR. COREN: I don't think we've covered that
4 subject.

5 MR. THOMPSON: I'm sorry, Your Honor. I thought
6 that was his question.

7 THE COURT: No. I think his question was whether
8 or not the agreements were there. I don't think he was
9 making a distinction about who had the right to exercise.

10 MR. THOMPSON: Forgive me, Your Honor. I
11 misunderstood then.

12 THE WITNESS: I wouldn't know either one of those
13 questions.

14 BY MR. THOMPSON:

15 Q Mr. Coren raised your firm's fee application. Do you
16 remember that?

17 A Yes.

18 Q Is there a pending objection to your firm's fee
19 application?

20 A There is.

21 Q What's your understanding of the basis for that fee
22 objection?

23 A It's the same basis that was asserted by Skadden and
24 Cale Gates, with an unfounded accusation that we were somehow
25 both VSI and the Debtor's lawyer, and we're therefore

1 conflicted.

2 And without having to give any individual objections to
3 a fee that we should just have everything to scorch, we
4 bought a vexatious litigation counter to that, and Cale Gates
5 and Skadden both signed a stipulation of withdrawing their
6 objection.

7 And then, we had another stipulation. We were trying
8 to get to a mediation -- I mean, not a mediation, a global
9 resolution on the case. And then, of course, the opinion
10 came out, which discouraged any of that mediation.

11 Q Did that -- did that objection include a claim or an
12 allegation that you failed to make disclosures?

13 A Yes. Yes.

14 Q And can you characterize what that specific allegation
15 was?

16 THE COURT: I'm going to deal with the objections
17 separately.

18 MR. THOMPSON: Fine, Your Honor.

19 BY MR. THOMPSON:

20 Q Who filed that objection?

21 A That was Mr. Homony's counsel. Mr. Coren.

22 Q. Specifically.

23 A Mr. Coren, specifically. Yeah.

24 Q To your knowledge, was Mr. Coren retained for that
25 purpose?

1 A No. He was not.

2 Q Okay. Thank you.

3 THE COURT: Any recross, Mr. Coren?

4 MR. COREN: No, Your Honor.

5 THE COURT: Okay. Thank you very much, Mr. --

6 THE WITNESS: No, thank you.

7 THE COURT: I know I've always seen your name, but
8 Zahralddin. Right?

9 THE WITNESS: Yes, sir.

10 THE COURT: Thank you very much.

11 THE WITNESS: No. No. Thank you, sir.

12 THE COURT: Okay. Here's what we're going to do
13 for tomorrow. We're finishing Mr. Robertson. Period. Get
14 it all in. We'll start at 9:00, and we're done at noon. I
15 mean, I really -- I unfortunately, I don't have any other --
16 I don't have any other time unless we want to go into
17 Wednesday, because I have other hearings tomorrow in the
18 afternoon that I can't move. So we're going to finish him
19 tomorrow.

20 The one thing I will stress for the parties is I
21 know why we're here, which is an application for
22 administrative expense. And I know you have a burden, and I
23 know what the what the issue is. It's proof of benefit to
24 the estate for preservation of the estate. I really suggest
25 that the parties focus on that issue because there hasn't

1 been a lot of focus on that, at least to my hearing, in the
2 last three hours.

3 So I would really suggest that we streamline this
4 and focus in on why we're here. I understand there's lots of
5 litigation among the parties, and they all have -- and you
6 all have issues among yourselves about larger issues at play.
7 I get it. We're not going to solve all of the world's
8 problems tomorrow, but we are going to resolve at least this
9 motion.

10 So I really -- Mr. Robertson's going to be done
11 tomorrow, and so I just stress that for the parties. And
12 then we'll have to understand exactly how much time you think
13 you're going to need and how quick we're going to need it so
14 that I can get you all filled in with the remaining witnesses
15 that you think you may have. Okay? So use the time
16 overnight to at least hopefully talk about it, and, we can
17 start tomorrow at 9:00 a.m. Okay? We'll stand and recess
18 till tomorrow at 9:00 a.m. or the call of the clerk,
19 whichever is earlier.

20 (Proceedings concluded at 5:42 p.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ Wendy K. Sawyer

April 17, 2025

Wendy K. Sawyer, CDLT
Certified Court Transcriptionist
For Reliable